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Conflict of Laws as to Contracts: Minnesota Decisions

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CONFLICT OF LAWS AS TO CONTRACTS: MINNESOTA DECISIONS

By HENRY L. MCCLINTOCK*

THOUGH the question of the proper law to govern the rights and obligations of parties to contracts which are related in fact to more than one jurisdiction is one which frequently arises, there is no question of conflict of laws as to which there is more confusion. Not only do the courts of different jurisdictions, and even the same court in different cases, apply apparently inconsistent principles in the decision of cases which raise this question, but the authors of text-books and the leading teachers of the subject are unable to agree as to the principle which should be applied.[1] The object of the present paper is to examine the decisions of the Minnesota supreme court on this question.

In the case of *Herrick v. Minneapolis & St. Louis R. Co.*,[2] it was held that rights acquired under the laws of another state would be enforced here, though our laws gave no similar right, unless the enforcement of such right would be contrary to the public policy of Minnesota. That was an action in tort, but the court decided it by applying the rule which admittedly applied to contract rights. The court added that all matters pertaining to the remedy were governed by the law of the state where the action was brought. The question of what is right and what is remedy is outside of the scope of this paper. It may be noted, however, that the statute of frauds is held to pertain to the validity of the contract and not merely the remedy for its breach.[3]

Apparently no Minnesota case has raised the question of what law should govern the capacity of parties to enter into a contract.[4] Nor have we any decisions as to the law which should

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[1]Story, Conflict of Laws, 8th Ed., 325; Wharton, Conflict of Laws, 3rd Ed., 858-951; Minor, Conflict of Laws, 360; Westlake, Private International Law, 7th Ed. 302; Dicey, Conflict of Laws, 3rd Ed., 572; Beale, What Law Governs the Validity of a Contract, 23 Harv. Law Rev. 260, 270; Lorenzen, Validity and Effects of Contracts, 30 Yale Law Journal 655, 673.

[2](1883) 31 Minn. 11, 16 N. W. 413.

[3]Halloran v. Jacob Schmidt Brewing Co., (1917) 137 Minn. 141, 162 N. W. 1082.

[4]In Buckley v. Humason, (1892) 50 Minn. 195, 52 N. W. 385, the right of a real estate broker doing business in Chicago, but not having the required license, to recover a commission earned there for procuring an exchange of Chicago property for Minnesota property was decided

govern the formalities with which the parties must comply to give their agreement legal validity, but there are dicta that the law of the place where the contract is made should govern that question.[5] In *Halloran v. Jacob Schmidt Brewing Co.*,[6] the statute of frauds was held to affect the formal validity of the contract, and not merely the remedy. The contract involved in that case was a guaranty of a lease of Iowa real estate, made and to be performed in Iowa, so that all that the court had to decide was that the form of the writing must be governed either by the law of the place of making or of performance.

There is no manifest tendency to make any distinction between the law governing the validity of a contract and that governing its interpretation or performance. In *Johnson v. Nelson*[7] the court says that "the general rule is that as to matters of performance the laws of the place of performance govern." In that case the plaintiff had been hired in Minnesota by defendant and later was sent to Wisconsin where he was injured. The court decided that the action for his injuries was a tort action and governed by the Wisconsin compensation act, regardless of the place of the contract of employment. We find similar general statements that the validity of contracts is to be determined by the law of the place of performance.[8] We also find the court stating: "It is settled law that the place of the contract regulates its validity, interpretation, and the nature of its obligation;"[9] and again, "All substantive questions as to the rights and liabilities of the parties must be determined by the law of the place of contract."[10]

There is a distinction drawn between the law which governs the personal rights and obligations of the parties to a contract and that which governs the effect of the contract on the title to property. In *Swedish-American Nat. Bank v. First Nat. Bank*[11] an

on the theory that the making of the contract for the commission was an unlawful act, not on the theory that the absence of a license made the broker incompetent to contract for a commission.

[5]Thompson-Houston Electric Co. v. Palmer, (1892) 52 Minn. 174, 53 N. W 1137; Swedish-American National Bank v. First National Bank (1903) 89 Minn. 98, 94 N. W. 218.

[6](1917) 137 Minn. 141, 162 N. W 1082.

[7](1915) 128 Minn. 158, 150 N. W. 620.

[8]Seamon v. Christian Brothers Mill Co., (1896) 66 Minn. 205, 68 N. W 1065; Ames v. Benjamin, (1898) 74 Minn. 335, 77 N. W. 230; Swedish-American Nat. Bank v. First Nat. Bank, (1903) 89 Minn. 98, 94 N. W. 218.

[9]Schultz v. Howard, (1895) 63 Minn. 196, 65 N. W. 363.

[10]Culver v. Johnson, (1915) 131 Minn. 75, 154 N. W 739.

[11](1903) 89 Minn. 98, 94 N. W 218.

attack was made on warehouse receipts issued by a Minnesota corporation on its grain in its own warehouses, located in four different states, as a pledge of the grain to secure notes payable in Massachusetts. The court held that, although the principal contract was governed by the law of Massachusetts, the validity of the pledge must be determined by the law of the place where the grain was located, so that it was valid as to the grain situated in states having statutes making such pledges valid, and invalid as to the grain in states where there was no similar statute. This case is apparently contra to *In re Paige v. Sexsmith Lumber Co.*,[12] which held that a voluntary assignment for the benefit of creditors, valid where made, transfers the title to personal property wherever it may be situated. The court stated that "This is admitted by the relator to be the law, but it is claimed that the Wisconsin assignment is opposed to the express requirements of our statute, and, by the very terms of our law, is void for non-compliance with it." The two cases may be distinguished on the ground that the objection in the earlier case was failure to file the assignments in Minnesota, which is a matter of form, and the later case concedes that as to matters of form the law of the place of making may govern. In *Finnes v. Selover, Bates & Co.*,[13] and *Walsh v. Selover, Bates & Co.*,[14] it was held that Minnesota contracts for the sale of Colorado land were governed by Colorado law only as to their effect on the title to the land, and could be forfeited by the vendor for non-payment of the purchase money only in the manner permitted by the Minnesota statute. In *Clement v. Willett*[15] it was held that Minnesota law governed the obligation to the mortgagee of the grantee who accepted a deed conveying Iowa land whereby the grantee assumed the payment of the mortgage, the court finding that the contract of assumption was made and performable in Minnesota. In *Hewitt v. Dredge*[16] and *Merchants State Bank v. Sunset Orchard Land Co.*,[17] recovery was allowed under the Minnesota law on notes executed and payable in Minnesota secured by mortgages on land outside of the state, though the law of the place where the mortgaged lands were situated would not have permitted the recovery.

[12](1883) 31 Minn. 136, 16 N. W. 700.
[13](1907) 102 Minn. 334, 113 N. W. 883.
[14](1909) 109 Minn. 136, 121 N. W. 627.
[15](1908) 105 Minn. 267, 117 N. W. 491.
[16](1916) 133 Minn. 171, 157 N. W. 1080.
[17](1924) 158 Minn. 108, 196 N. W. 963.

The question whether the acceptance of a note given by a debtor to a creditor is payment of the antecedent debt was raised in *Thompson-Houston Lumber Co. v. Palmer.*[18] This question has sometimes been treated as though it were a question of the performance or discharge of the antecedent contract,[19] but the Minnesota court properly treated it as a question of the interpretation of the contract for the giving of the note.

In *Kolliner v. Western Union Telegraph Co.*,[20] plaintiff, a resident of Minnesota, claimed, as damages for failure to deliver a telegram sent from Montana to Washington, expenses incurred which he could recover under a Minnesota statute but not under the common law. Defendant (appellant) argued that the Minnesota statute could not apply since the contract was neither made nor to be performed here. Plaintiff made no argument as to the law which should govern. The supreme court merely remarked that: "The contract was made in Montana and there was no pleading or proof as to the statutes of that state." In view of the contentions of the parties we cannot accept this case as authority for the rule that the measure of damages for breach of a contract is governed by the law of the place where it is made, rather than by the law of the place where it is to be performed.

These decisions indicate that, in general, all questions on which depend the rights and obligations of parties to contracts are to be decided by what has been aptly termed "the proper law of the contract"[21] or, as the Minnesota court has phrased it, by "lex loci contractus (referring to the place of the seat of the contract, as distinguished from the place where it may casually happen to have been signed.)"[22]

In several cases the court has stated or intimated that the contract is governed by the law of the place where it was made, but in most of such cases there has been no controversy as to the law which should apply, or the controversy has been between the application of the domestic or foreign law.[23] There is one case in

[18](1892) 52 Minn. 174, 53 N. W. 1137.

[19]Dunnell's Minnesota Digest, Conflict of Laws 1532; Tarbox v. Childs, (1896) 165 Mass. 408, 43 N. E. 124.

[20](1914) 126 Minn. 122, 147 N. W. 961.

[21]Dicey, Conflict of Laws, 3rd Ed., 572.

[22]Thompson-Houston Electric Co. v. Palmer, (1892) 52 Minn. 174, 53 N. W. 1137.

[23]Reiff v. Bakken, (1887) 36 Minn. 333, 31 N. W. 348; Midland Co. v. Broat, (1892) 50 Minn. 562; Fiske v. Lawton, (1913) 124 Minn. 85, 144 N. W. 455; Kolliner v. Western Union Telegraph Co., (1914) 126 Minn. 122, 147 N. W. 961.

which it was decided, against a contention that the law of the place of performance should govern, that the validity of a clause limiting the liability of a carrier to an agreed valuation was to be determined by the law of the place where the contract was made.[24] The question first came before the court in *Powers Mercantile Co. v. Wells Fargo & Co.*,[25] in which the goods had been shipped from Chicago and were destroyed in a wreck which occurred in Illinois. The case was argued by both sides on the theory that the law of Illinois governed, and the court stated that the case was to be determined by the law of Illinois "where the contract was made." The question came before the court again in *Porteous v. Adams Express Co.*,[26] where the shipment was from New York to Pennsylvania and there was no proof as to where the loss occurred. Plaintiff's counsel made no argument as to the law which should govern, contending only that the evidence showed there was no agreement to limit liability. *Carpenter v. United States Express Co.*,[27] involved a limitation of liability for an express shipment from New York to Minneapolis. Counsel for plaintiff argued that the question was not to be determined by the law of New York, contending that liability for an interstate shipment was governed by the Hepburn Act, or, if not, that the proof of receipt by the carrier and failure to deliver to the consignee made a prima facie case against the carrier which could be rebutted only by proof that the loss occurred in a jurisdiction under whose laws the contract was valid. Defendant relied on the case of *Porteous v. Adams Express Co.*,[28] as determining that the law of New York controlled and the court followed that case, with the statement that plaintiff's argument that the law of the place of loss governs an interstate shipment was against the weight of authority. "A contract of carriage of goods from one country to another is governed by the laws of the place where it is made."[29] The court added that even if the law of the place of loss governed, it would not help plaintiff since there was no proof as to where the loss occurred. The court did not discuss, nor attempt to distinguish the Minnesota cases which had stated or held that the

[24]Carpenter v. United States Exp. Co., (1912) 120 Minn. 59, 139 N. W. 154.

[25](1904) 93 Minn. 143, 100 N. W. 735.

[26](1911) 115 Minn. 281, 132 N. W. 296.

[27](1912) 120 Minn. 59, 139 N. W. 154.

[28](1911) 115 Minn. 281, 132 N. W. 296, supra note 26.

[29]Quoted from 9 Cyc. 682.

law of the place of performance, as that presumably intended by the parties, should govern contracts relating to other subjects.

In *Stahl v. Mitchell*[30] it was held that the Pennsylvania statute for the appointment of the successor of an assignee for benefit of creditors became part of the contract, which was made in Pennsylvania, so that the successor appointed under that statute could convey good title to land belonging to the assignor which was situated in Minnesota, though the statute could not, of itself, vest such power in the assignee. The court said:

"The law of the jurisdiction in which the parties to a contract reside, and in which it is executed, especially if it is to be performed within that jurisdiction, is usually, so far as it affects the substance of the contract, to be deemed a part of it."

The first attempt of the court to state a principle by which the law governing a contract could be determined was in the case of *Thompson-Houston Electric Co. v. Palmer.*[31] The question involved was whether a note executed by a debtor and delivered to the creditor was taken in payment of the antecedent debt. The note was executed while the debtor was casually in Missouri, and was delivered to the creditor in Illinois. By the law of the latter state, the giving of the note was prima facie a payment of the antecedent debt; by the law of Minnesota it was not. The court might well have held that the contract to give and accept the note, which was the contract whose interpretation was involved, was made and performed in Illinois, though the note itself was executed elsewhere, but it did not distinguish between that contract and the contract embodied in the note. It held that the law of the contract was "prima facie that which the parties intended to apply," and that here they presumably intended that the law of Illinois should apply. In that case the controversy was whether the question was one of remedy, so that the Minnesota law would apply, and the court also said: "Whoever contracts in a country is presumed to know its law, and whatever he does not express plainly he refers to the interpretation of that law."

In *McKibben v. Ellingson*[32] a debtor who resided, conducted his business and kept all his property in North Dakota, executed, while in Minnesota, an assignment to a Minnesota assignee for the benefit of creditors. The assignment was recorded as required by the North Dakota statute, but not in conformity to the Minne-

[30](1889) 41 Minn. 325, 43 N. W 385.
[31](1892) 52 Minn. 174, 53 N. W 1137.
[32](1894) 58 Minn. 205, 59 N. W. 1003.

sota statute. In ruling on the objection that the assignment was invalid because it did not comply with the law of the place where it was made, the court held that the assignment was not made effectual till it was recorded in North Dakota and was to all intents and purposes a North Dakota contract, so that it was unnecessary to decide what law would govern a contract made in one state and performable in another.

Schultz v. Howard[33] was an action on notes dated in Chicago and payable at "Globe National Bank." The issue was whether the liability of maker and endorsers at the time of execution was joint or joint and several. No law of Illinois was pleaded, but counsel for plaintiff in his brief referred to a statute of that state making all joint obligations joint and several. The court held that, in the absence of an allegation to the contrary, it must presume the law of Illinois was the same as that of Minnesota but added:

"Assuming that the Globe National Bank, at which the notes were payable, is in Illinois, this statute, if pleaded, would have been decisive of the case, for it is settled law that the place of the contract regulates its validity, interpretation and the nature of its obligation."

Clement v. Willett[34] involved the liability of a grantee, who had assumed a mortgage on the property, to the holder of the mortgage. The deed was between Minnesota residents, and executed here, but conveyed land located in Iowa. The court held that, since the contract of assumption was silent as to place of performance, it is presumed that it is to be performed in the place where it was made. "It does not appear that the parties intended that the validity of the obligation should be determined by the laws of Iowa, instead of the laws of Minnesota."

In *Walsh v. Selover, Bates & Co.*,[35] the question whether the law of the place of execution controlled was squarely presented. A resident of North Dakota had contracted to buy, from a resident of Minnesota, lands in Colorado. The negotiations for the contract were conducted in Minnesota and all payments, except the taxes, were to be made here, but the contract was signed at the purchaser's residence in North Dakota. In the earlier case of *Finnes v. Selover, Bates & Co.*,[36] the court had held that a similar contract executed in Minnesota was governed by the Minne-

[33](1895) 63 Minn. 196, 65 N. W. 363.
[34](1908) 105 Minn. 267, 117 N. W. 491.
[35](1909) 109 Minn. 136, 121 N. W. 627.
[36](1907) 102 Minn. 334, 113 N. W. 883.

sota statute relating to forfeiture for the purchaser's failure to make payments as agreed. In the later case it was held that:

"The fact that the contract, after the terms thereof had been agreed upon in this state, was subsequently reduced to writing and mailed to Walsh at his residence in North Dakota, and by him there signed and returned to Bates in Minneapolis, does not make it a North Dakota contract."

A similar question arose in *True v. Northern Pac. R. Co.*,[37] where the purchaser negotiated in Washington for the purchase from the railroad of several tracts of its lands located in that state. The contracts had to be approved by the railroad's land commissioner in Minnesota before they became binding. Thereafter they were forwarded to the agent in Washington who delivered them to the purchaser. The court held that the contracts were Washington contracts and the Minnesota statute regulating forfeitures did not apply. The court stated that the place of approval would have been the place where the contract was made except for the provision for formal execution and delivery thereafter in Washington.

Goedhard v. Folstad[38] was an action by the endorsees of notes given for the purchase price of Texas land. The plaintiffs, appealing from an order denying their motion for judgment notwithstanding the verdict for defendant, argued that the notes were Texas contracts and that an instruction under the Minnesota law that a provision for attorney's fee and increased interest if they were not paid at maturity caused a forfeiture of all interest was erroneous. Defendants, on that point, merely stated the error, if any, was harmless, since the jury found plaintiffs were not due-course holders. The supreme court held that the evidence established as a matter of law that plaintiffs were due-course holders, but held that the notes, since they were executed in Minnesota and delivered here, and specified no place of payment were Minnesota contracts, though they were on printed forms which bore a Texas date line.

Several cases have considered the law governing usury. In *Smith v. Parsons*[39] the notes were executed in Minnesota and secured by mortgage on Minnesota lands, and were payable in Connecticut. The court held that an express stipulation that the law of Minnesota should govern was valid. In other cases the court

[37] (1914) 126 Minn. 72, 147 N. W 948.
[38] (1923) 156 Minn. 453, 195 N. W 281.
[39] (1893) 55 Minn. 520, 57 N. W 311.

has applied the law of the place of payment, rather than the law of the place of making and of the situs of the security;[40] the law of the situs of the security rather than the law of the place of making and of payment;[41] and the law of the place of making and payment rather than the law of the situs of the security.[42] The last case is the only one which applied a law under which the contract was invalid, and it should be noted that it would have been usurious also under the law of the situs of the security, the only question being the effect of the invalidity. The earlier cases are squarely based on the intent of the parties, such intent being implied where not expressed. In *Green v. Northwestern Trust Co.*,[43] the court said that if the intent was not expressed, the court must find the presumed intent which determines the governing law, and that there was a strong presumption the intent was to contract under a law making the contract valid. The case of *Patterson v. Wyman*[44] does not mention the intent of the parties. There is no intimation in these cases that the law governing usury is any different from the law governing other features of the contract.

It is obvious that we cannot deduce from these cases that either the law of the place where the contract was made, or the law of the place of performance, is the proper law of the contract in all cases. However desirable it might be from a theoretical standpoint, and to give certainty to the law, the experience of our court, as that of other courts, has evidently shown that neither rule is sufficiently flexible to meet the diverse situations that arise, that a rigid application of either would require us to pay too high a price for certainty.

It might, perhaps, be argued with fair success that all the cases may be harmonized on the principle that the law of the contract is that with reference to which the parties intended to contract. But, aside from the theoretical objections to the adoption of intent as an invariable criterion,[45] it furnishes but little assistance in most of the cases. As said by the Minnesota supreme court:

[40]Ames v. Benjamin, (1898) 74 Minn. 335, 77 N. W. 230; Jenkins v. Union Savings Association, (1916) 132 Minn. 19, 155 N. W. 765.
[41]Green v. N. W. Trust Co., (1914) 128 Minn. 30, 150 N. W. 229.
[42]Patterson v. Wyman, (1919) 142 Minn. 70, 170 N. W. 928.
[43](1914) 128 Minn. 30, 150 N. W. 229.
[44](1919) 142 Minn. 70, 170 N. W. 928.
[45]See Beale, What Law Governs the Validity of a Contract, 23 Harvard Law Rev. 260.

"In a search for the actual intent of the parties when none is expressed, there is an element of legal jugglery. Usually parties to transactions of this nature, referable to one state or another, or in part to one state and in part to another, have no unexpressed but actual intent as to the law which shall control. The question of what law governs does not suggest itself to them."[46]

In addition, we have the objection that, to permit the parties to select a law under which their contracts will be valid, permits them in many cases to evade the policy of the law, which otherwise would control, to refuse enforcement to the particular agreement. That objection is often met by denying recognition to the intent of the parties when that is merely to evade the policy of the law. The general result of such reasoning is that in cases where the parties have expressed no intent, and probably had none, the court presumes an intent to be governed by the law which the court thinks, for reasons which may not be disclosed in the opinion, ought to apply; whereas in cases where the parties have foreseen the difficulty and expressed their intent as to the law which should govern, such intent is often disregarded as an attempt to evade the proper law of the contract. We are still given no principle to determine what is the proper governing law which the parties are presumed to apply, and which they cannot evade by expressing an intent to be governed by a different law. To say that the intent of the parties shall govern, provided their intent is not merely to evade the proper law, only presents the original problem in a different form.

But, assuming we cannot discover some principle that will decide all cases, it is not necessary that the law on this subject be left in the state of confusion indicated by our court in its opinion in *Seamans v. Christian Brothers Mill Co.*,[47] in which the court stated that it is a general rule that a contract made in one state will be enforced in another; that it is also a general rule that where a contract is entered into in one state, to be performed in a certain other state, its validity will be determined by the law of the latter state; that usually where these two rules come in conflict, there is little more than a question of determining the intention of parties as to the governing law; but that cases arise where they are not at liberty to select the law they choose—thus giving us four inconsistent and often conflicting rules without any indication as to the situations in which each is to be applied. If we

[46]Greene v. N. W Trust Co., (1914) 128 Minn. 30, 36, 150 N. W. 229.
[47](1896) 66 Minn. 205, 68 N. W. 1065.

cannot find one rule which may be satisfactorily applied in all cases, we may obtain the desired certainty in the law by determining the conditions which call for the application of each of the different rules.

A natural explanation for the failure to evolve any rule to solve all of these cases is that they present different legal questions which require different solutions to make the law protect the different interests concerned. The validity of a contract depends, not on one legal factor, but on several. There must be an agreement between the parties, often it must be in a particular form, it must call for performance which public policy permits. There is nothing in the nature of these factors which would make it desirable that each should be governed by the same law. Whether the act of entering into a contract is permitted or prohibited ought to be governed by the law of the place where the act occurs. For example, the validity of an agreement made on Sunday ought to depend on the law of the place where it is made, since that law alone is concerned with the observance of Sunday in that jurisdiction. Whether the act which the agreement requires to be done is permitted or prohibited ought to be determined by the law of the place where it is to be done. For example, a contract made in Indiana to hold a prize fight in Illinois ought not to be upheld if the law of Illinois prohibits prize fights. It may be argued that in such a case the law of Indiana would govern but that Indiana law would not sustain a contract to perform an act which would be illegal by the law of the place where it was to be done. But, if that question comes before the Minnesota court, our court ought not to consider itself bound by the Indiana decisions as to the validity of such a contract. Whether the agreement is in the form required to make it legally binding is a question which is generally referred to the law of the place where the contract was made, though it would seem there need be no objection to permitting the use of any form which is recognized by some other law which, for other reasons, governs other features of the contract.

A question analogous to the formal validity of a contract but which, in some cases, may require a different solution is the question of the effect which the law attaches to certain acts in determining whether there was an agreement or whether the parties are bound as though they had agreed. How shall we select the law which ought to govern an attempted acceptance or withdrawal of

an offer, or the presumptions which arise from other acts of the parties? Clearly, if there is any fact to indicate that the parties had in mind any particular law when they performed the act whose effect we are trying to determine, that law ought to be applied. In the absence of any such indication, we would be justified in applying the law of the place of contract.

The interpretation of a contract may involve two very different processes, the ascertainment of the meaning of the language used by the parties and the supplementing of the language to cover situations not foreseen and provided for. The first process calls for the application of the law with which the draftsman of the instrument was familiar, especially if the question depends on the meaning of terms defined by that law and the draftsman was a lawyer. The second process presents a more difficult problem; we cannot say the parties intended to adopt any particular law; if they had foreseen the situation they would probably have expressed their agreement with reference thereto. Any provision supplied by law must be more or less arbitrary, and the choice of the law which shall supply that provision must likewise be arbitrary.

It is probable that with reference to most of the different questions that arise in actions on contracts related to different jurisdictions, there will be situations in which no particular law is clearly indicated, and the choice will have to be made by rules adopted largely for convenience and certainty. Perhaps our express shipment cases[48] may be justified on the ground that a release of a carrier's liability ought to have the same force during the entire shipment, though it passes through several states, and, therefore, we will select the law of the place of shipment as the governing law in spite of the fact that the policy underlying the law as to the validity of such a release is as much the concern of each state through which the shipment passes as it is of the state where the contract is entered into.

Where negotiable instruments are involved, the necessity for a certain and definite rule whose applicability can be ascertained from the face of the instrument probably requires different treatment from that accorded to other contracts. Certain rules, even

[48]Powers Mercantile Co. v. Wells Fargo & Co., (1904) 93 Minn. 143, 100 N. W. 735; Porteous v. Adams Exp. Co., (1911) 115 Minn. 281, 132 N. W. 296; Carpenter v. United States Exp. Co., (1912) 120 Minn. 59, 139 N. W. 154.

though they are arbitrary, will be applied to such instruments in circumstances which otherwise would call for different treatment.

It is conceded that the solution of this perplexing problem above suggested is not a simple one, but calls for a system even more complex than here indicated. But it is better to have a frank recognition of the complexities of the situation and a limitation of the decision of each case to the particular question thereby presented than to have, what has apparently been common in the past, a group of rules, each apparently simple in itself and stated as though it applied to all cases, which are inconsistent with each other and which are each, at times, applied to the solution of cases without any indication why that particular rule, rather than another, should be chosen. The courts must make a choice between these rules, and if the decisions will tell us the basis on which the choice is made, it ought soon to be possible to bring some order out of the chaos which now represents the law on this subject.