

Again in *Brandao v. Barnett*, supra, judicial notice was taken of the usage of trade by which bankers are entitled to a general lien on the securities of customers in their hands.

The greater or less time during which a custom has prevailed may be material in determining how far it has generally prevailed, but if it is once shewn to be universal, it is none the less entitled to prevail because it may not have formed part of the law merchant as previously recognized and adopted by the courts. *Goodwin v. Roberts*, L.R. 10 Ex., at p. 356.

A mercantile custom may be so frequently proved in courts of law that the courts will take judicial notice of it, and it becomes part of the law merchant. It would entail useless expense in such a case to require parties to prove by a large number of witnesses a custom which has been proved over and again. But if the reported cases do not clearly establish a custom it must be proved by evidence as on a question of fact. *Ex parte Powell* (1875), 1 Ch. D. 501, at p. 506; *Ex parte Hattersley* (1878), 8 Ch. D. 601; *Chawcour v. Salter* (1881), 18 Ch. D. 30, at p. 50; *Edelstein v. Schuler*, [1902] 2 K.B. 144, at p. 155. Evidence to establish a custom must relate to the mercantile usage of the place where the obligation is undertaken (*Wisconsin v. Bank of B.N.A.* (1861), 21 U.C.R. 284), and is to be performed.

Mercantile usage, however extensive, should not be allowed to prevail if contrary to positive law, including in the latter such usages as, having been made the subject of legal decision, and having been sanctioned and adopted by the courts, have become, by such adoption, part of the common law. *Goodwin v. Roberts*, supra; *Edie v. East India Co.* (1761), 2 Burr. 1216.

The authority given by the factors acts to a mercantile agent, who is in possession of goods with the consent of the owner, to pledge the goods when acting in the ordinary course of business of a mercantile agent, is a general authority given to every mercantile agent, and is not restricted by the existence in any particular trade of a custom that a mercantile agent employed in that trade to sell goods has no authority to pledge them. *Oppenheimer v. Attenborough*, [1908] 1 K.B. 221.