

## BOOK REVIEWS

*The Law Governing Sales of Goods at Common Law and under the Uniform Sales Act.* By Samuel Williston. Baker, Voorhis & Co., New York, 1924-2d ed., 2 vols., clxxxiii, 1-972; xiii, 973-1954.

The reviewer's task is at times peculiarly grateful. Professor Williston's book is monumental. The trackless mazes of detail have been explored; the workmanship is patient and accurate; the foundation is deep and the buttressing powerful; yet every stone is laid with clear relation to the plan, and the architecture is the achievement of a scholar and an artist who has seen the whole before he built and kept his vision clear at every moment of the building. If such a treatise were not authoritative, our profession would be shamed. This second edition affords joyous evidence that the first, in a short fifteen years, has become authority.

Two points with reference to the second edition deserve especial notice. In the first place, the book has been brought up to date not only by citation of the new cases, but by discussion of the new problems; not only by discussion of the new problems, but by utilizing the light they shed to work out a further and clearer integration of the whole material. In the second place, the author's constructive criticism of the law has justly become less tentative, and so more cogent. At times his judgment on his own draftsmanship has a note of gentle irony. "It must be admitted that the language of the Act in this matter is unsatisfactory." But throughout, as in his work on Contracts, no room is left for confusing what the author wishes with what the courts have held. When his views diverge from the cases, the divergence is made clear; commonly the wisdom of diverging becomes equally clear.

The numeration of sections is unchanged. New matter is for the most part in footnotes to old sections or in new sections—close to two hundred of them—interspersed as *280a*, etc. The usual index and table of cases are present; the Sales Act, Sales of Goods Act, and Conditional Sales Act are appended.

New matter can best be roughly listed: the exact effect of the statute of frauds, where it applies; recent developments in construction with reference to warranties; f.o.b. and c.i.f. contracts discussed in considerable fulness; letter of credit and trust receipt problems briefly summarized. The treatment of documents of title in general and of the banker's security title in particular, have become fuller and vitally clearer, and the sound doctrine that taking a bill of lading to seller's order does not bar suit for the price is admirably presented; there are new sections on the effect on a cash sale of taking a dishonored check in payment, on the effect of delay in installment contracts, and on the effect of the buyer assigning a single but mistaken excuse for non-acceptance. Furthermore, new sections appear on remedies: election by a conditional seller, damages after repudiation, and the measure of damages in a number of special cases, notably those involving shipment from one place to another. Finally, there is new discussion of misrepresentations by third parties, of various sorts of supervening impossibility, and of various types of illegality, including future trading, resale price maintenance, and restraint of trade generally.

Detailed criticism is of course impossible. To pick out single items for difference is to carp; to discuss all points of difference with the buttressing called for by the quality of the work is to undertake a companion volume. There are, however, certain matters which pervade the whole, which call for comment, and in reference to which individual criticisms are not out of place.

Three sweeping trends seem to dominate the law of Sales. The first is the trend toward simplification and uniformity, shown in the spread of the Act, shown in the contract side of sales, especially in the law of warranty, as the multitude of roots in tort and contract and estoppel, in expression and implication

and judicial imposition of obligation, in present sale and future contract, head up in a fairly unified and simple body of rules. The author is fully conscious of this trend, and indeed by his Sales Act took a major part in it. He sees and urges the desirability of its extension: making warranties in bailments, or in the "sale" of a privilege of consumption, square by analogy with those in sales and contracts for sale. Yet two criticisms may be ventured. On the one hand, the desirability of a rule simple in form does not always mean that such a rule is capable of simple application; the attempt of the Act to lump sales and contracts for sale pretty much under the same wording leads to no mean number of knotty questions. And at times conditions call for flat differences of rule in superficially similar situations. For instance, actions by consumers arising out of injuries caused by defective food or gas heaters or automobile wheels have little policy-connection with privity of contract. Ordinary defects in quality, as between merchant and merchant, go to profits and to commercial adjustment. But the defects under consideration go to general security of life in a complex industrial civilization. Their analogy is tort. The damages, for instance, bear no relation to the price; the retailer is rarely in a position to protect himself against the trouble, and often unable to pay without bankruptcy; the person injured is as likely to be the buyer's servant or son, as himself. It is to be regretted that Professor Williston did not cut more incisively into these cases, and expose the divergent situations concealed beneath the common label "warranty."

On the other hand, the arrangement of the book—which as is known, follows the Act—obscures one vital development in the trend toward unity: the tendency to place obligations of the seller in matters of time, place, manner of delivery on the same footing as his obligations—whether conditions or duties—with reference to character and quality of goods. To the reviewer, an alignment of the material which develops these similarities, especially in the executory contract for sale, offers hope of new clarity not only here, but also in regard to the complex questions of appropriation.

The second major trend in this field has been the increasing complexity and diversification of the property side of sales: the recognition of a lien, apart from title; of a security title, apart from the beneficial interest; of still further divided ownership when the security title is transferred to a financing agent to secure advances to the seller. Here the author's contributions have been striking and effective. In one situation, however, that of incomplete or improper appropriation, it is believed that he has failed (section 277) to perceive and bring out a further development along this line fairly well indicated by the cases: the severance from the general property in the seller of a special property interest, an option in the buyer to take or leave. It is striking that the cases stating that in such circumstances property has not passed until the buyer's assent are almost wholly cases where the buyer is a dissentient defendant; whereas cases to the contrary are almost wholly cases where the buyer is claiming rights in the goods. The author's suggestion that "it does not seem possible to say that the buyer subsequently has an option to assert at his pleasure that the property did or that it did not pass to him at the earlier moment," seems to the reviewer to deny the possibility of saying exactly what the courts are doing; whereas to hold that property passes subject to a condition subsequent is, under the language of section 69 (1), to put the buyer to an election between return and damages to which it is hardly conceivable that a court would force him. If a justificatory analogy for the position here taken is necessary, it is available in the law of ratification.

In regard to the third great trend which underlies both of the above, the gradual but persistent conformity of sales law to the changing business structure, little need be said. The reviewer believes that the present importance of the executory contract requires a regrouping of the whole subject matter from that angle; that the historical development of the concepts out of the earlier cases on present sales hinders today more than it helps student or lawyer. But that is

individual heresy, not criticism; it is to be welcomed, rather, that Professor Williston so often and so well sets the law against its background of social need and social change. One wonders, however, from the historical angle, whether much of curiously uncommercial development of early sales law in this country as opposed to England would not gain light from examination of the economic history of the two countries.

One last point of general import: throughout, the author conducts his discussion with reference to "principle." The reviewer has been unable to gain a clear impression of what is meant by the term. At times it obviously refers to a conflicting rule of more general scope with which a given decision is clearly inconsistent. *cf.* sec. 112. At times it seems to refer to a rule drawn from a number of cases more or less analogous and thought to be controlling. *cf.* sec. 494b. When, on the other hand, more cases are cited *contra* than *pro*, and practical objections to the principle are adduced as well, as in sec. 221, and, finally, the whole question turns on an implied warranty the only guide to whose content lies in the results of the cases, the term becomes so shadowy of content as to cast some doubt on its value.

The matters thus mentioned perhaps merit mention. And yet the reviewer confesses to some shame at having let them stand. Here is a treatise which has shaped and will further shape our law. It stands, the work of a master, whole, massive, rounded, beautiful. Now against that fact, of what worth is a reviewer's "criticism?"

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*Chief Justice Sir William Bereford.* By William Craddock Bolland. With an Introduction by the Right Honorable Sir Henry Duke. Cambridge, at the University Press, 1924. pp. ii, 33.

This, in its original form a lecture delivered at the University of London, is, as *The Year Books* and *The General Eyre* also, one of the valuable by-products resulting from Doctor Bolland's editing of the "Year Books" of Edward II for the Selden Society. Only one who has spent years on the sources themselves could reconstruct, as we have them here, both the character and the personality of Edward II's Chief Justice of the Common Bench. Bereford himself is made to speak to us through the medium of a remarkable collection of stories which six hundred years ago he told on the Bench. Of even more interest to the lawyer, and perhaps to the layman too, is a unique tale of this fourteenth century judge as an interpreter and construer of statute law.

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#### BOOKS RECEIVED

*Security Against War.* By Francis Kellor and Antonia Hatvany, collaborator. New York, The Macmillan Company, 1924. Vols. II, pp. ix, 851, k.

*Lindley on the Law of Partnership.* Edited by Hon. W. B. Lindley. Ninth edition. London, Sweet and Maxwell, Ltd., 1924. pp. clxxxiv, 1231.

*Codes of Ethics.* By Edgar L. Heermance. Burlington, Free Press Printing Co., 1924. pp. viii, 525.

*Law and Its Administration.* By Harlan F. Stone. New York, The Columbia University Press, 1924. pp. vii, 232.

*Trial of Bywaters and Thompson.* Edited by Filson Young. Toronto, Canada Law Book Company, 1923. pp. xxxii, 261.