

BOOK REVIEWS

- Principles of Contract.* By Sir Frederick Pollock, Bt. Ninth Edition. London, Stevens & Sons, Ltd., 1921. pp. lx, 820.
- Chitty on Contracts.* Seventeenth Edition. By W. Wyatt-Paine. London, Sweet & Maxwell, Ltd.; Toronto, The Carswell Co., 1921. pp. ccv, 1098.
- Contrats par Correspondance.* By Albert Cohen. Paris, Ernest Sagot & Cie., 1921. pp. xii, 196.
- Contracts in Engineering.* By James Irwin Tucker. Second Edition. New York, McGraw-Hill Book Co., 1920. pp. xii, 331.

Anything coming from the pen of Sir Frederick Pollock is worth the attention of the American scholar and lawyer, both because of the power of his reasoning and because Sir Frederick has among Englishmen an exceptional knowledge of American problems and American law. Pollock on *Contracts* has become a classic, and in succeeding editions it has been kept pretty well up to date by the author. The text of the present edition, however, will not be found to differ much from that used in 1905 by Professor Williston in his American edition. There is a little change as to contracts by correspondence, and Dr. Albert Cohen's pamphlet is cited. There is still no chapter on the subject of Discharge. It would have been interesting to get Sir Frederick's explanation of *Les Affreteurs v. Walford* [1919, H. L.] A. C. 801, where a court that purports never to reverse itself deals again with the rights of a third-party beneficiary.

There are some new sections on Repudiation; and the former chapter on Impossibility is suppressed, some parts of it being included in the new chapter entitled "Conditions, and herein of Frustration." The frustration cases have compelled a fuller treatment of the law as to conditions, but this treatment is still far from complete. Rule-makers, whether they be text-writers or a legislature, can seldom construct rules in advance of actual experience with facts. The experience of the English courts, broad though it is, probably does not cover as many possible cases as does the experience of the courts of our 48 states. The present chapter is obviously following the work done by various authors in this country. Sir Frederick has not reached bottom in distinguishing between conditions precedent and conditions subsequent; and the present reviewer believes that the modern rules as to Impossibility are not mere "canons of interpretation" and that the rule as laid down in *Paradine v. Jane* is substantially without influence. The author does not distinguish between impossibility of performing acts required by a promisor's duty and impossibility of fulfilling conditions precedent to a promisor's duty.

It may incidentally be asked why the subject of discharge of sureties is discussed under the heading "Unlawful Agreements." The agreement by a creditor to extend the time of payment may discharge a surety, but it does so because it is valid and operative and not in the least "unlawful."

It ought not to be expected that the seventeenth edition of an English work on contracts originally published in 1826 would be worth buying in the United States. No doubt this edition of Chitty on *Contracts* would be of great service to an American lawyer if he had nothing else. It is a large volume, dealing with the general theories of contract law in rather meagre fashion, and attempting to cover—as was the fashion in Chitty's time—the whole field, including Sales, Agency, Partnership, Bailments and Carriers, Leases, Negotiable Instruments, Master and Servant, and Suretyship. Much of the book is devoted to English statutory law, the chapters on stamping of contracts and on the capacity of parties containing little else.

No American student should go to this book to learn our law, for it is not even aware of modern cases and modern development of theory in the United States. The work is practical and reasonable, but makes no close analysis and gives no enlightening discussion of such subjects as unilateral contracts and consideration. *Cook v. Oxley* is quoted at length with entire approval, and there is no effective explanation of *Dickinson v. Dodds*. No difference is noticed between a quasi-contract and a contract implied in fact. The editor does not observe that *Les Affreteurs v. Walford* [1919, H. L.] A. C. 801, affects the law as to the rights of third-party beneficiaries, and the case is not even cited. Perhaps the English courts will also fail to observe the fact.

It is with especial pleasure that a student of the common law will read the thesis of Dr. Albert Cohen on *Contracts by Correspondence*. We have here an attempt by a Continental lawyer to make a study of Anglo-American contract law by the use of cases, comparing it also with the law of France. In what other Continental work on comparative law will be found a "table of cases"? Here we have a list of 150 English and American cases; and they are often stated and discussed in the author's text. Among these cases are found such familiar names as *Adams v. Lindsell*, *Cook v. Oxley*, *Dickinson v. Dodds*, *Mactier v. Frith*, and *White v. Corlies*; also a few more recent cases like *Bank of Yolo v. Sperry Flour Co.* (1903) 141 Calif. 314, 74 Pac. 855, and *Cole etc. Co. v. Holloway* (1919) 141 Tenn. 679, 214 S. W. 817. Along with the cases are cited and discussed works like Williston's new treatise on Contracts, and articles in the *YALE LAW JOURNAL* and the *HARVARD LAW REVIEW*. Dr. Cohen understands such subjects as our "objective theory of contract," irrevocable offers, and acceptance by silence. He accepts the theory of Lord Herschell in *Henthorn v. Fraser* that acceptance by mail operates from the date of mailing because of business custom and not because the post is a "common agent." He knows of our conflict as to whether an offer is "operative" before it is known to the offeree. His clear and accurate statement of American law makes one soon feel at home even though the language is in French. No doubt his short chapters dealing with the Conflict of Laws are of less value than the rest of the work.

Contracts in Engineering is written as an elementary text-book for engineers and contractors. "The aim has been to enable the engineer to co-operate efficiently with lawyers, and to appreciate more perfectly the need for their assistance." If restricted to this purpose, the book may be useful. It may give to engineers some general ideas as to the problems of the lawyer, and it may give to lawyers some general ideas as to the facts of an engineer's business. This should result in the drawing of better engineering contracts. Perhaps the author is too confident that he can state "in brief compass" "a considerable number of elementary legal principles" and can convey to a beginner a definite and accurate idea by "a simple and brief statement of the spirit of the law." He warns the student, however, that conflict is common and that error is possible. The reviewer is of the opinion that this work is of greater service as a lawyer's handy reference book than as a text for students. Engineering students would much better be given a small number of selected cases so that they can observe how legal principles are constructed by the courts and are applied by them to the varying facts of life. They might thereby gain a little insight into "the spirit of the law." The present book attempts to give them altogether too much, and the result cannot fail to be thin, misleading, and incorrect. Observe the following "questions" for students prepared by the author: Give the technical definition of a sale. Discuss the Statute of Frauds as a rule of evidence. What does an indorser warrant? What is the liability of a partnership in tort? Name the principal common-law powers of a corporation. Define a trade fixture. Define proximate cause.

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