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Review of “Outlines of the Law of Bailments and Carriers Ed. 2,” by Charles E. Cullen

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Book Reviews

OUTLINES OF THE LAW OF BAILMENTS AND CARRIERS. By *Edwin C. Goddard*.
Second Edition by *Charles E. Cullen*. Chicago: Callaghan & Co., 1928.
pp. xvi, 504. Price \$4.50.

This book should be of particular interest to alumni of the Washington University School of Law because it is a revision of a textbook which has been used in the Law School for many years and the editor is a member of the faculty at the present time. As a result of Professor Cullen's efforts the book has grown from a comparatively slender volume of 250 pages to one of more than twice that size, principally through the addition of some 2,500 cases to the 1,000 referred to in the original edition and of marginal notes commenting on the changes in the law of this important subject which have occurred in the 23 years that have elapsed since the publication of the first edition.

The first part of the book, it will be recalled, deals with the definition and classification of bailments and the legal results of the relation in general, followed by chapters on the ordinary bailments, bearing the civil-law Latin names, which presumably are to this day feverishly learned by law students on the eve of examinations and promptly forgotten thereafter. A feature of this portion of the book is the inclusion in the footnotes of references to various uniform statutes, such as the warehouse receipts act, bills of lading act, stock transfer act, and negotiable instruments act, which have been widely enacted since the first edition was published. The adaptability of established principles of the law of bailments to the more modern forms of the relation is shown by the fact that the cases listed in the notes to the section on agisters and liverymen largely deal with garage-keepers.

Probably of principal interest are the chapters relating to common carriers of goods. The development of transportation in the United States since 1904 has been so extensive that the need for a revision and amplification of the first edition of this work was urgent. In that period the freight traffic of the railways has more than doubled, and in the last few years there has come a rapid growth of motor transportation on the highways and the beginning of what may be an important utilization of air transport. This expansion of transportation facilities has been accompanied by important changes in the law of common carriers, the most important of which grew out of the Hepburn act of 1906 and subsequent amendments of the interstate commerce act. The problem of the regulation of motor transportation is now pressing. As only about 33 states have attempted any sort of regulation of motor carriers and their interstate operations are entirely unregulated, this textbook is of particularly timely interest just now when lawyers and legislators no doubt are frequently confronted with problems requiring consideration of common-law principles applicable to common carriers by motor truck or bus.

The text of this work will probably be found to be of more current interest in connection with motor transportation than with railways, for much of it is obsolete so far as the latter are concerned. One example is section 202 on page 169, dealing with the amount of compensation of the carrier, reading as follows:

Except as controlled by statute the rate fixed by the contract governs. It is usual to publish a schedule of rates, and the rate is often specified in the bill of lading, and these if according to the intention of the parties will govern. If there be no contract then it is implied that the usual rates shall be paid, or in the absence of custom a reasonable rate. What is a reason-

able rate is a question of fact for the jury.

The only comment on this paragraph in the notes is to the effect that the common law has been very largely abrogated by statute, and the editor obviously has railways in mind. It would have taken little space to point out either in a note or in the body of the text that the element of contract in fixing the measure of railroad rates has entirely disappeared; that the publication of schedules of rates is rigidly required; and that such rates are fixed in the first instance by the carrier, subject to review by administrative commissions, performing quasi-legislative functions in a quasi-judicial manner. Trials by jury of cases involving the reasonableness of railroad rates have occurred within the last twenty years under unusual circumstances, but at present it may fairly be said that a trial by jury for the purpose of determining the reasonableness of a railroad freight rate is almost as rare as a trial by combat.

One of Professor Cullen's objects in bringing forward a second edition of this work, according to his preface, has been to show the changes which have taken place "due to statutory and commission regulation of carriers." The book is somewhat disappointing in this respect because the editor has undertaken to do this by notes to the text mainly consisting of references to and quotations from court decisions involving the interstate commerce act. A few of these decisions have been inaccurately digested, and some of them are of historical interest only. It is believed that the object could better have been attained by substituting a note briefly tracing the history of statutory and administrative regulation, its principal subjects, and mode of operation, with reference to a few cases of fundamental importance.

In the chapter on liability under special contract Professor Cullen has been more successful. Much of the matter in the text of this chapter has been rendered obsolete by the Carmack and Cummins amendment, and here the editor has added parenthetical statements to some of the sections, pointing out this fact. The notes to this and other related chapters, setting forth the current statutory provisions and referring to the leading cases, are much more satisfactory than those dealing with more general provisions of the interstate commerce act.

Concerning the chapters relating to carriage of passengers there is little to be said. From the dates of the cases cited under this head it appears that the law on this subject has not been modified to any important extent within the last two decades. Perhaps one reason is that since 1904 the number of passengers killed and injured has been reduced about 38 per cent., although the total number of passengers carried has increased 20 per cent. Another reason is a more liberal policy on the part of the railroads in settling claims of this character out of court.

The chapter on carriers of intelligence has been brought up to date by reference to federal legislation affecting telegraph companies and the more important cases arising thereunder.

Despite the minor defects which have been pointed out Professor Cullen has produced a work which should be of considerable value to practitioners as well as students, provided it is borne in mind that the book does not pretend to be anything more than an outline. For an exhaustive study of problems involving this branch of the law it affords an excellent starting point because of its clear statement of fundamental principles, its references to leading cases, and its list of a large number of articles in law reviews, bearing on the subject. This last feature is one of the most valuable in the book.

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