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Book Reviews

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BOOK REVIEWS.

THE LAW GOVERNING SALES OF GOODS AT COMMON LAW AND UNDER THE UNIFORM SALES ACT. By Samuel Williston, Weld Professor of Law in Harvard University. New York: Baker, Voorhis & Co., 1909, pp. cix, 1304.

Probably no man in the country is as well equipped to write upon the subject indicated in the above title as is Professor Williston. For many years Professor Williston has been known as a brilliant scholar, and a stimulating teacher of the law of Sales, and his learning in this important field has been increased, and his judgment tested, and perhaps tempered and corrected, during the years of his service in drafting the Sales Act for the Commissioners for Uniform State Laws. In this last mentioned work Professor Williston was in active consultation, with other specialists in the subject, with practicing lawyers, merchants and bankers and thus has surveyed the field from every point of view. And the book reflects the great ability and the exceptionally broad experience of its author. It is scholarly, but it is also "practical," vivid and illuminating; for the author's equipment has given him in unusual degree, the rare faculty of visualizing, so to speak, the situations out of which the principles he describes arise.

While the preparation of a work on this subject was suggested by the author's experience in drafting the Sales Act, the book is very much more than a commentary upon that Act, and is, as stated in the preface, a complete treatise, as well, upon the Common Law of Sales. Though not professing to develop his subject, historically, the author, so far as the present reviewer has observed, has indicated the growth and changes of the principles treated, sufficiently to fully explain them. He has also made occasional references to and comparisons with the Civil Law rules, and has not hesitated to express his own opinions; but all this with such due sense of proportion as not to offend the most "practical" of utilitarians. The text, to say nothing of the appropriate table and the footnotes show the study of a large number of cases, but nowhere has the author merely strung together quotations or paraphrased extracts from the cases. He states the principles, as he understands them, gives his reasons and cites the authorities.

Though the present reviewer has examined all of the book, at least cursorily, and much of it, including all controverted questions, carefully, he is unable to muster even a respectable array of corrections or criticisms, such as some writers of book notices are prone to offer, as proof of their own learning and thoroughness. Not everyone would agree, of course, with all that Professor Williston says. Thus the Sales Act has adopted the so-called "Massachusetts rule" for determining whether a given contract is for "goods, wares and merchandise," or for "work, labor and materials," under the Statute of Frauds. (Sales Act, Sec. 4, sub sec. 2.) Professor Williston admits that the English rule is the only logical one (§ 55) but he felt obliged to reject it, as it has found so little support in this country. Doubtless this was a

necessary decision, but as the English rule is not only the logical one, but also very much easier and more certain to apply than any other, it is a pity that it cannot be received. The author sharply criticises the modern English view, as to what is necessary to make out a case of acceptance (of "acceptance and receipt") under the same statute. This view is stated in *Kibble v. Gough*, 38 L. T. Rep. 204, and in *Page v. Morgan*, 15 Q. B. D. 228, and has been adopted into the English Sale of Goods Act (Section 4 [3]). This view has never found favor in the United States and the Sales Act (Section 4 [3]) requires the assent, by words or conduct, of the buyer "to becoming the owner of those specific goods." The English interpretation certainly does violence to the language of the old statute, but it accomplishes the purpose of the statute, which is to require evidence of the making, and not of the performance of the contract. On this ground much is to be said for it. The author's discussion of Conditions and Warranties is an extremely valuable one. The unfortunate confusion in the use of these words is pointed out, and the true meanings are explained with keen analytical skill (Sections 179-184.)

As was to be expected Professor Williston defends the Massachusetts rule permitting either rescission or an action for damages by the party injured by breach of warranty. (Sections 603-609.) This rule had already been adopted in the Sales Act (§69) and the justification for it stated by Professor Williston in his discussion with Professor Burdick in articles in the Harvard and Columbia Law Reviews, a few years ago. The rule will certainly make for fair dealing in trade and will simplify and promote the administration of justice in the courts. Special attention may also be called to the admirable treatment of the "transfer of property, between buyer and seller" (Chapter VII), "cash sales," and the allied topic "conditional sales" (Chapter X), and to "documents of title" (Chapter XII). But the same high standard of excellence is maintained throughout the book. It is invaluable.

The American "Sales Act," and the English "Sale of Goods Act" are printed as appendices, and there is a good index.

American lawyers may well take pride in the development of the law of Sales by the scholarly work of Professors Williston, Mechem and Burdick. It has amply justified the existence of the AMERICAN LAW SCHOOL.

H. M. B.

CASES ON THE MEASURE OF DAMAGES. Selected by Israel Franklin Russell, Professor of Law in New York University. Chicago: Callaghan and Company, 1909, pp. xxix, 714.

Even if the author had not told us in his preface that this collection was prepared with especial reference to "pedagogic purposes" rather than to meet the wants of practitioners, it would be evident that he was attempting to meet the constantly expressed demand on the part of the student of cases for some systematizing, by either instructor or book maker, of the results of the analysis of cases. This is shown by his table of contents which is considerably more elaborate than is usually found in our recent case books.

Notes at the ends of the several sections, with elaborate cross references to other cases involving the principles discussed, are apparently introduced with a like purpose of summing up results. Whether this is a virtue or not depends upon the point of view of the instructor. It will not meet the approbation of the extreme advocates of the laboratory method in the handling of cases, but it will be rather comforting to every good teacher who meets this demand from students so constantly. Possibly the advocates of the laboratory method may insist, on the basis of the old doctrine of total depravity, that what a student wants is *per se* bad for him. Whatever one's views as to the value of such work, it may be said that Professor Russell has done it well.

The cases in the several sections are well selected and properly arranged to show the development of the principles involved. The author seems to have made a special effort to bring the law down to date by the introduction of a relatively large number of late cases.

With the exception of stating in his preface that he gives to *Hadley v. Baxendale* the distinction of an unabridged report, the author tells us nothing about his principle of editing, and therefore gives us no means of determining how wisely he has steered between the Scylla and Charybdis of no editing and over editing.

J. H. D.

THE COURTS OF THE STATE OF NEW YORK. Their History, Development and Jurisdiction. By Henry W. Scott, of the New York Bar. New York: Wilson Publishing Co., 1909, pp. 506.

This is an historical study of the various courts which have exercised jurisdiction in the territory now embraced within the State of New York since the landing of the Dutch at New Amsterdam in the early part of the seventeenth century. It therefore covers a period of almost three hundred years, which the author divides into two portions, the Colonial Period, from 1623 to 1777, and the Constitutional Period, from 1777 to 1909.

That New York has passed through a long and tedious experience, with almost every conceivable kind of judicial tribunal, is strikingly clear from a glance at this work. We are so accustomed to the idea that this country is young and that our own legal history is but an appendix to the history of English law, that one feels quite a shock of surprise as he sees these three centuries of shifting and changing judicial machinery unrolled before him.

The author first takes up the development of the courts in chronological order, tracing the evolution of the early Dutch courts, the transition to the English procedure, and the many changes which the new-world conditions made necessary throughout the period of English supremacy. This he follows with an account of the innovations resulting from the outbreak of the Revolutionary War, and a description of the new courts established under the constitution of the State of New York. These constitutional courts have had a checkered career, one system hardly becoming established before a new one was introduced. No other state has tried so many experiments along this line as New York, and the published reports of its long procession of courts have been a constant enigma to lawyers in other jurisdictions.

Following this connected chronological discussion of the New York

courts, the author rearranges his material and presents it in the form of a complete separate treatment of each one of the courts mentioned in the first part of his book.

The subject is a large one and admits of only the most cursory handling within the narrow limits of this volume. Much of the information has apparently been obtained from original sources, but its value is greatly reduced by the total lack of reference to these sources or to any authorities whatever. For this reason, if for no other, it can hardly be deemed a notable contribution to legal literature.

E. R. S.

THE FIXED LAW OF PATENTS, As Established by the Supreme Court of the United States and the Nine Circuit Courts of Appeals. By William Macomber. Boston: Little, Brown, and Company, 1909, pp. cxlv, 925.

The author defines the Fixed Law of Patents as the decisions of the above mentioned courts, and says the work is intended to be an orderly statement of this "Fixed Law" in the exact language of the Court, except in minor instances, where such course is impossible, and to be absolutely authoritative because it is what the Courts have said and not what the author or anyone else thinks they have said. The scope of the book does not cover pleading, practice or procedure except as to matters peculiar to patent law, it does not touch patent soliciting nor trade-marks or copyrights, and all rules stated upon the authority of a court of original jurisdiction, no matter what the rule may be or how long it has been respected, are omitted.

Within the foregoing limitations, defined by the author, the book is a valuable digest, well and accurately printed and indexed with a good table of cases. The author appears to have quoted from all of the principal cases, of the class described, which possess quotable language, though, as he states, there are some cases which have been omitted, as for instance, *Wold v. Thayer & Chandler*, 148 Fed. Rep. 227-229, which states "drawings are merely illustrative, not working plans" and might, therefore, have been properly cited under the heading of "Drawings" at 323 as well as under "Estoppel" page 347.

The work is unquestionably a valuable addition to the digests of a patent specialist's office, but a standard text book on patents which discusses subjects completely and in a connected way should be of more value to the "general practitioner—for the lawyer looking for general principles," who is buying but a single book upon the subject of patents.

D. B. C.

THE EVOLUTION OF LAW. A historical review based upon the author's Commentaries on the Evolution of Law. By Henry W. Scott, of the New York Bar. New York: Borden Press Publishing Co., 1908, pp. 165.

This is a "study of the history and development of the law, from its most primitive beginning and from the most ancient civilization," in eighty-four small and much padded pages. Naturally it is extremely general and

free from detail. One can read it comfortably in a couple of hours, and so reading it one obtains a pleasing summary of the more important features of the evolution of human laws. But to claim more than this for the book seems unreasonable. It does not strike the casual reader that any new facts or notable conclusions are presented. The vast magnitude of the subject and the tiny space allotted to it would make impossible more than the merest outline. When, therefore, the author, in his introduction, particularly recommends the work for its "completeness and comprehensiveness," and feels called upon to say that because of its "rare collection of facts and material hitherto practically unknown to all save the oldest and ripest scholars, a failure to give it to the legal literature of the world and to the profession would not only border upon culpability, but would be almost, if not wholly, unpardonable," we think he has taken his effort too seriously.

The author's introduction, the importance of which he "desires to impress distinctly upon the mind of the reader," is a curious, rambling essay upon the nature of society and government and the philosophical concept of law, mingled with a sort of chronological bibliography. It concludes with a long and commonplace quotation on Plato from "Legal Outlines," by Professor Hoffman, which embraces a two-page list of the Dialogues of Plato with the page numbers in the edition of Taylor and Sydenham. Next follows a chapter by the late John J. Ingalls, which was written as an introduction to the author's earlier work entitled "Distinguished American Lawyers." It is merely a tribute to the value of biography as a guide to young men, and concludes with a recommendation of the author as "a young man of unusual diligence, thoughtfulness and application."

Finally, on page 69, the subject of the Evolution of Law is taken up, and covered in the manner we have indicated. Egyptian law is discussed with comparative fullness. The laws of Israel are merely touched upon. The laws of China are disposed of by an account of the career of Confucius. The laws of Greece are dealt with by means of brief references to Lycurgus, Solon, Draco, Plato and Demosthenes. A few words about the Twelve Tables and about Gaius, Cicero and Justinian complete the discussion of Roman law. Feudalism is given a page or two and Germany and Russia about as much covered them. Ten pages are devoted to English law and a couple of pages to the laws of Japan. Then Jean Jacques Rousseau and Thomas Jefferson receive brief attention, and a two-page conclusion completes the work.

E. R. S.