

his lamentable fate the evidence disclosed him as having decided weaknesses of his own, with no special desire to remedy matters.

G. C. T.

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## BOOKS AND PERIODICALS.

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*A Selection of Cases on the Sale of Goods.* By John Delatre Falconbridge, Dean, Osgoode Hall Law School. Toronto: The Canada Law Book Company, Limited. 1927.

This book recently published is one of a series of draft case books prepared by various law teachers and used in mimeographed form for some years in some of the Canadian Law Schools. It is the first of the series to be published. A critical perusal dictates the hope that it shall not be the last.

There has not been hitherto in Canada unanimity as to the place of the case book in legal education. Some teachers rely on oral lectures supplemented by the citation and reading of cases; others make the case book the basis of the course and rely on the class room discussion without formal lectures. Whatever be the respective merits of these two systems there is clearly discernible in Canada and England an inclination to the view that the case book as such has an essential place in every curriculum. It is a matter of individual preference on the part of the teacher as to what degree of emphasis shall be placed on the case book but there can be no doubt that a properly selected collection of cases is of immense advantage to both teacher and student.

The lecture method presents the student with a series of general principles with illustrative cases arranged and pre-digested by the lecturer. Unfortunately the lawyer is confronted not with principles of law but with sets of facts which must be analyzed and reduced to their essentials before the relevant principle can be found. The case-method thus trains the student to inductively discover his law from his facts and also develops a critical habit of mind; (subject to certain qualifications) it would seem to be the preferable method where the time available and the ability of the teacher permits.

As a member of the teaching Faculty of Dalhousie Law School the present reviewer had the experience of using Dean Falconbridge's book for two years and it is in the light of that experience that his comments are respectfully offered.

A case book is a collection of cases on a given topic compiled for teaching purposes according to the compiler's experience as to which are the most suitable cases for that purpose. Obviously one teacher's experience may not correspond with that of others; it is therefore idle to point out reasons why any given case should have been included or omitted or to take issue with

the proportion of space given to particular topics. Each book must be tested with reference to the question whether or not *as a whole* it furnishes an adequate treatment for teaching purposes. There can be no doubt but that the present book is an eminently satisfactory one for that purpose.

The book is divided into chapters entitled: "Contract of Sale of Goods"; "Transfer of the Property in Goods as between Seller and Buyer"; "Who can give a Good Title to Goods"; "Representations, Conditions and Warranties"; "Delivery, Acceptance and Payment;" "Actions for Breach of Contract;" "Unpaid Seller's Remedies against the Goods".

Each chapter is subdivided into numbered headings and sub-headings under which the cases are grouped. Both the sequence of chapters and the internal arrangement of topics conforms to a clear and well-thought out plan wherein each subject logically and naturally leads to the one succeeding it. The author has not slavishly followed the traditional arrangement of topics or cases but such variations as he has made add to the book's effectiveness for study and expository purposes.

The cases set out are 172 in number of which 120 are English, 49 Canadian and 3 Australasian. 84 are prior to and 88 are subsequent to 1900 in date.

They include many leading cases decided prior to the codification of the law and a very interesting and representative selection of the more modern authorities decided with reference to the Act. Subject to one point of criticism later referred to (and which is perhaps merely a matter of opinion) it can be confidently stated that the selection has been judiciously made and the cases in their totality present an accurate cross-section of the Law of Sales.

In addition to being a well arranged selection of informative and valuable cases the book contains explanatory and connective notes by the author. These notes add greatly to the value of the book to practitioners as they refer to the relevant cases on each topic with occasional reference to periodical literature. In some cases they are particularly suggestive and instructive.

An appendix contains the English Act *in extenso* and a parallel table stating the corresponding sections in the various provincial Acts, which are all substantially reproductions of the parent Act. Other relevant statutes are also set out in full, *e.g.*, The Statute of Frauds, Lord Tenterden's Act, The Factors Act, &c.

Subject to what has already been said as to the difficulty of selection a few points of criticism may properly be submitted.

The learned author has in various instances omitted well known and useful cases decided prior to the codification of the law apparently preferring the more recent English and Canadian cases whenever available. These have, of course, the merit of being direct authorities on the application and construction of the Act. It is at least arguable, however, that the older English decisions are often preferable for teaching purposes. Frequently the more recent cases go off on some point of construction of the Act or, stating briefly the result of the earlier cases, follow or distinguish them. It is true, however, that for an exhaustive statement and discussion of the common law principles now embodied in the Act resort must still be had to the earlier cases in which they were first formulated and developed. And what the student needs is not the law simpliciter as authority so much as the reasoning which underlies it and governs its development.

As illustrative of this, clause (c) of sub-section 3 of chapter 2: "The Specification of Goods by Subsequent Appropriation" may be cited. The topic is a peculiarly important and difficult one and in the writer's view some one or more of the cases cited below might well have been used in place of some of those selected, as being more illuminating to the student-mind and more suitable for class room discussion.<sup>1</sup>

The suggestion here made and in no dogmatic spirit, is that the older cases with their more extended discussion of *principles* are not infrequently more valuable to the student and teacher than the modern decisions which frequently are valuable merely as authorities on some specific point.

Chapter V., "Delivery, Acceptance and Payment," and chapter VI., "Actions for Breach of Contract," are particularly satisfactory. The chapter on "Conditions and Warranties" is exhaustive as is also that on the "Right to Sell," which latter, however, is rather disproportionately long.

The vexed and important question of Delivery in Instalments is adequately set out in section 6 of chapter V. It might possibly have been approved by the addition of *Freeth v. Burr*,<sup>2</sup> with its oft-quoted test of repudiation for partial breach as stated by Coleridge, C.J. To the note at the end of this section, at page 474, the following cases and articles may usefully be added:<sup>3</sup>

This review has aimed at being critical in the highest sense and it is to be hoped that nothing herein will be taken as implying that the volume under review is not a very valuable one. In the opinion of the reviewer it is a book of the highest value alike to the student, the teacher and the practitioner. It is to be hoped that every Law School in Canada, whether following the Case System or not, will prescribe it as a text. And every barrister will find in it a convenient collection of cases on the law of Sales of Goods which, supplemented, as it is, by useful notes of relevant and recent cases, constitutes an ample working library on the subject. Mr. Falconbridge has again rendered a distinct service to the profession in Canada and it is greatly to be desired that this excellent case book should lead to the early publication of the other draft case books already in use in some of our Law Schools.

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<sup>1</sup> *Jenner v. Smith* (1869), L.R. 4 C.P. 270; *Robde v. Thwaites*, 6 B. & C. 388; *Aldridge v. Johnson*, 7 El. & Bl. 885; *Langton v. Higgins* (1859), 4 H. & N. 402; *Fragano v. Long* (1829), 4 B. & C. 219.

<sup>2</sup> (1874) L.R. 9 C.P., 208.

<sup>3</sup> *Withers v. Reynolds* (1831), 2 B. & A. 882; *Dominion Coal Co. Ltd. v. Dominion Iron and Steel Co. Ltd.*, [1909] A.C. 293; *Millar's Karri and Jarrab Co. v. Weddel, Turner & Co.* (1909) 100 L.T. 128; *Snagproof Ltd. v. Brody*, [1922] 69 D.L.R. 271; *Clausen v. Canada Timber and Lands, Ltd.* (1923), 4 D.L.R. 751; *Madden v. McCallum*, [1923] 3 D.L.R. 41; *Howell v. Evans* (1926), 161 L.T. 168; reference may also be made to the following articles: 14 Harv. L. Rev. 317, 421; 9 Harv. L. Rev. 148; (1921) 41 Can. L.T. 474; (1926) 161 Law Times 186.