

course of duty, might well have been contracted with *R. v. Thomson* [1912] 3 K.B. 19, itself a decision which merits more comment.

In the same chapter, one suspects that Professor Nokes is unduly complacent about the purpose for which complaints in sexual cases are admissible. He is content to repeat the traditional formulation that such complaints are admissible, not in order to establish the truth of their contents, but rather to show the consistency of the complainant's conduct or to negative consent where consent is in issue. This rationalisation which is of course based on the cases has always troubled the reviewer. The distinction between establishing the truth of the contents of a complaint and showing the consistency of the complainant's conduct seems to be unduly fine. Surely it would be preferable to recognise this and admit that once again we are in the presence of a tacit breach of the hearsay principle.

The foregoing comments may readily seem to be carping criticism but they are not so intended. They do, however, underline a significant feature about the method employed by Professor Nokes. His book is an introduction to the subject for students. Its terms of reference are the traditional framework within which this subject has been traditionally taught. It is essentially expository rather than critical. This is a pity because the Law of Evidence is at the present time being subjected to close analysis in many countries and the deep knowledge of this subject which Professor Nokes so obviously has would provide an admirable basis for a critical and reasoned examination by him of the deficiencies of the present law and the now numerous proposals for its reform. One would, for example, like to know his views about the various proposals currently being canvassed for reform of the hearsay rule. Does he think that the present rule is satisfactory or does he agree with those reformers who regard much of it as archaic deadwood which ought to be pruned away? Again, what does he think about the Rule in *Hollington v. Hewthorne*? Should it be retained, or modified or swept away? These are weighty questions and it would be immensely stimulating to see the impact of Professor Nokes's deep knowledge and wide experience upon them.

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THE LAW OF SALE OF GOODS IN AUSTRALIA AND NEW ZEALAND, by K. C. T. Sutton, B.A., LL.M.(N.Z.), Ph.D.(Melb). Sydney. The Law Book Company Ltd., 1967, xlvi and 405 pp. (including appendix and index). New Zealand price \$14.35.

There is a wealth of Australasian authority on the law relating to sale of goods. Readers of English text books might be excused for thinking that only about three cases, *McRae v. Commonwealth Disposals Commission*, *Taylor v. Combined Buyers* and *Riddiford v. Warren* are really deserving of attention. Professor Sutton demonstrates that this is not so; a rich source is tapped with a vengeance. He does not, and could not, ignore English authority, but a fair proportion of the approximately 1,600 cases he cites are from this part of the world—and rightly so!

A good number of Canadian cases, and some American ones, are also mentioned, and there are numerous footnote references to periodic literature on the subject. This book, then, could fairly claim to be the first comprehensive analysis of sale of goods within a full Commonwealth context.

The author does not confine himself to decisions of superior courts. For example, there are numerous references to decisions of the New Zealand Magistrate's Court. Some might regard this as overloading an already full vessel, but such decisions are useful to practitioners if only as illustrations of the application of undoubted principles to specific fact situations.

The greater part of the book is taken up with the provisions of the Sale of Goods Act 1908, and the case law to which this enactment has given rise. This is a technical and notoriously difficult area. It is no fault of the author that, in pursuing his avowed primary aim of stating the law as he conceives it to be, his careful examination of the authorities forces him so often to employ such phrases as "the legal position in the light of the authorities *appears* to be", "it is *possible* that" and "it is *submitted*", rather than "it is clear law" or "it is well established". But students and practitioners will find in this book ample material and discussion to assist them in making an intelligent and advised prediction of what the courts might do.

In the introduction to the first edition of his now standard work, Sir McKenzie Chalmers, who drafted the Bill which became the Sale of Goods Act 1893 (U.K.), on which the Australasian Acts are based, felt able to say:

It is always easier to amend an Act than to alter the common law. Legislation, too, is cheaper than litigation. Moreover, in mercantile matters, the certainty of the rule is often of more importance than the substance of the rule. If the parties know beforehand what their legal position is, they can provide for their particular wants by express stipulation. Sale is a consensual contract, and the Act does not seek to prevent the parties from making any bargain they please. Its object is to lay down clear rules for the case where the parties have either formed no intention, or failed to express it.

Certain and clear indeed! Chalmers would shudder at the veritable jungle of often inconsistent decisions to which his panacea gave birth. It is not surprising that the author avails himself of the opportunity to point out areas where reform is overdue.

There is a close inter-relationship between the "hard core" rules relating to sale of goods, and general principles of the law of contract. Those whose concern lies in the broader field will find Sutton's excursions therein of interest. Chapter 2, which deals with contractual capacity of infants, includes an excellent section on restitution in infants' contracts, concluding at pp. 56-57 with a convenient, if somewhat qualified, summary of the position. This is one area where reform is suggested, along the New York lines. This would enable the courts to "so adjust the equities between the parties that unjust enrichment is avoided".

The brief account of ("mere") representation and terms of the contract (pp. 101-104) gives proper emphasis to the "convenient" notion of the collateral contract. The possibilities of this device to enable purchasers to sue manufacturers, with whom they are not in privity, in respect of statements as to quality and safety of their products are discussed at p. 125.

Chapter 23, on exclusion clauses, is by no means comprehensive.

However, it contains an adequate account of the main lines of approach which the courts have taken in sale of goods cases, culminating in a review of the effect of the well known *Suisse Atlantique* case. The House of Lords there abolished the rule, as it was thought to be, that in the case of fundamental breach, no exception clause, however widely drawn, protects the party in breach. The author concludes, correctly in my view, that the new approach taken in *Suisse* will not mean that the courts will reach a different result in the vast majority of cases.

In his introductory chapter he deals with the effect of misrepresentation on a sale of goods contract. Some of this is perhaps beside the point in New Zealand, and in Victoria, whose courts appear to have accepted the reasoning of the New Zealand Court of Appeal in *Riddiford v. Warren*. Outside these jurisdictions, the issue is a lively one, and no clear conclusion is possible. The two Canadian decisions analysed at pp. 13-14 justify the comment that, in reading such cases "it is impossible to escape the conclusion that the Courts are straining to seek a way out from the straitjacket in which the common law and the Sale of Goods Act have placed them, and are doing violence to legal principle in order to give the purchaser relief." Reform in this particular area has been effected in the United Kingdom since the book was published: Misrepresentation Act 1967. No doubt New Zealand will follow suit; indeed one hopes that this country will produce something rather better.

This is no "easy" book. The average student, indeed practitioner, could get bogged down. But the fault, I feel, lies with the state of the law and not with the author.

Nevertheless, a clearer communication could perhaps be achieved by a more liberal use of headings and subheadings within the major subdivisions of the various chapters. There were times when this reviewer realised only after reading a couple of sentences of a new paragraph, undivided by spacing or heading from its predecessors, that the author was on to a different point. The index, too, is a bit skimpy for the busy practitioner and harried student; but in reading cases from other jurisdictions they will find the comparative tables of Sale of Goods and Factors Acts very useful. (In the text the author cites the relevant section numbers of the New South Wales statutes.)

Too often, where a point is mentioned briefly in the text, a footnote reference reads "the matter is fully discussed *infra*", or "*supra*", without stating the actual pages where this discussion is to be found. The abbreviation "S.G.A." used throughout is an acceptable space-saving device; but surely "L. Atkin" (p. 5, n. 11) and "L. Wright" (p. 147, n. 27) were oversights.

A number of the propositions at pp. 331-332, on the position where an unpaid seller has resold the goods under s. 49(3) of the Sale of Goods Act 1908 (N.Z.), are now incorrect. *Gallagher v. Shilcock*, on which the summary is based, has been overruled by *R. V. Ward Ltd. v. Bignall* [1967] 1 Q.B. 534 (C.A.).

The publishers of this book have produced in recent years Higgins, *The Law of Partnership in Australia and New Zealand* (1963), and Pannam, *The Law of Money Lenders in Australia and New Zealand* (1965). Sutton's book is a worthwhile addition to what it is hoped will prove to be an expanding series.

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