

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, Voorhees & Co., 1909.

The selection of Professor Williston some years ago, by the Commissioners for Uniform State Laws, to draft the provisions of the Sales Act, was a distinct recognition of the fact that he is probably the best informed authority on this subject in this country. His excellent case book on sales, which has been in use for many years not only at his own University of Harvard, but also in many of the law schools throughout the United States, was a sufficient indication of the care with which he had investigated the subject.

After the completion of his draft of the Sales Act, it was to be expected that Professor Williston would follow with a treatise illustrating and explaining it. As he says in his preface, upon beginning this work he discovered that it would be impracticable to annotate the statute, without writing a general treatise on the law of sales. It is fortunate for the profession and students of the law that Professor Williston came to that conclusion. He has written a book which is a careful and complete discussion of the whole subject, and which it is not too much to say will in time largely supplant the very excellent standard authorities now in use, although Benjamin and perhaps some of the earlier text writers will doubtless still be consulted on especially knotty points, which are not discussed quite so fully by Professor Williston.

The book contains references to probably all the important cases at common law on the subject of sales, but is written from the standpoint of a master of the subject, rather than a mere follower of authority; one whose ideas have had thorough opportunity to crystallize and whose expression of opinion, where authority falters, will have a real effect on judicial decision.

As is well known to those who have given much attention to the subject of sales, there are a few large subjects of much difficulty in reference to which the law has always been in more

or less confusion. These matters Professor Williston treats very fully, not only as to existing law on the subject, but also as to the effect of the Sales Act if enacted, explaining also his reasons for drawing the statute as he has done. For example, the subject of "Conditions and Warranties" is very carefully and thoroughly explained, the law of England and the United States compared, and reasons given for crystallizing the law by the suggested provisions of the Sales Act. This chapter is admirable in every way, and it would be difficult to suggest any improvement upon it. It is not easy to think of any phase of the topic which has not been fully covered, and the arrangement is such that the searcher may readily find what he desires. The numerous vexing questions relative to bills of lading are treated in a satisfactory manner in Chapter XII, which is called "Documents of Title." The discussion of the rights of the unpaid seller is very complete, and if, in the consideration of stoppage in transit, we miss somewhat the leisurely and scholarly discussion of Benjamin, this is because the topic is now relatively less important, and because of the necessity of compressing the book within reasonable limits. The lesser topics, for example, capacity of the parties, are not quite so thoroughly treated, owing, perhaps, in part to the fact that they are less interesting, but as a whole the work is unusually exhaustive. As an illustration of this, the careful discussion of local rules of law deserves especial mention. Where there is a great diversity in the law of the various States, Professor Williston has taken pains to set forth the rule in each State. For example, in considering the effect of retention of possession where there has been a sale of chattels, he reviews the laws of all the States in order. Examining his citations of the law of Pennsylvania, which is more familiar to the writer than any other, reference is found to all the leading cases and to many others not so well known; if this has been done with as much thoroughness for the other States, as would appear from the number of cases cited, a very large task has been performed in this alone. At another place, in discussing conditional warranties, the peculiarities of State rules are discussed at length, with full reference to local authorities. In the consideration of sales C. O. D., Professor Williston has very carefully discussed the two-fold rules in force in the United States; one that the property passes to the buyer only when the price is paid, and the other that the title passes, but the possession is retained to secure the payment of the price. He reaches the conclusion that the latter rule is the better and gives this as his reason for having framed the Sales Act on this theory. The writer has never been able to

convince himself that this view of the matter is correct. It would seem that in most cases where goods are sent C. O. D. there is an actual intent on the part of the vendor that the property shall not pass until the price is paid. While the theory that the vendor makes the carrier his agent only for the purpose of retaining a lien, title to pass in the meantime, has often served as a convenient means of escape to liquor sellers who shipped into counties where they were not licensed, or where the sale of liquor was forbidden, it does not impress the writer as sound or according to the actual intent of the parties. The reasoning in *State v. O'Neill*, 58 Vt. 140, seems better than that of the class of cases illustrated by *Commonwealth v. Fleming*, 130 Pa. 148. This, however, is only a matter of opinion, and cannot be construed as a criticism of Professor Williston's conclusions.

CASES ON THE LAW OF PARTNERSHIP, INCLUDING LIMITED PARTNERSHIPS. By Eugene Allen Gilmore. St. Paul: West Publishing Company, 1908.

We have had occasion to notice several prior volumes of this series which the publishers have named "The American Case Book Series." They have one general editor and are arranged on a general scheme sent out by the publishers, which very elaborately defines the bounds and limits within which the authors—if they may be so called—must do their work. This being the case, the series will probably stand or fall as a series rather than as separate works; the faults and virtues of arrangement and analysis being thus necessarily rather that of the system than of the separate worker. The individuality of the latter, apparently, can be shown only in the selection of the cases, and here Mr. Gilmore seems to have shown independence of judgment and to have relied upon his own experience in the class room. This should give very good results in other class rooms, as cases well tried out in the class room of one university can hardly fail of being useful in other but similar conditions. The individual professor must sooner or later, it would seem, work out his own case book, if he has any individuality of method or of thought, but while his methods are in process of being worked out he may often gladly avail himself of the aid offered by those who have found a satisfactory method and give the results of their labors to the world in this form.

LEADING ARTICLES FROM RECENT LEGAL PERIODICALS

LEGAL ETHICS.

Professional Idealism. Charles F. Chamberlayne.

The low idealism of the legal profession; the fact that the standard of professional conduct is abnormally low, is noted by Mr. Chamberlayne as recognized by the profession, and he says, "as a panacea for the evil they have given us—codes of professional ethics. To the fervent cry for the bread of moral life a stone of formalism and negation, admirable in itself, has apparently been given." "The success or shipwreck of a professional voyage will be found to be determined by moral forces over which a code of ethics, however salutary, can have but slight control. When the compass of life is 'out' something more is needed than an accurate chart of the rocks." Mr. Chamberlayne, however, takes the Canon of ethics of the American Bar Association as a sort of foundation for the recommendations he makes. He would advise adequate instruction on legal ethics in the law schools. The difficulty in their doing so he finds in the finding of the right man and how to pay him when he is found. He believes, however, that the right man may, if not easily, yet ultimately, be found. The question of payment may present greater difficulties, but may be solved by the legal profession itself, which "has it in its power, at any moment, to create a national endowment of such extent and range of application as will be in some sense a fitting expression of its determination that no considerable body of law students in any section of the country, who are desirous of following the high ideals of their profession, shall be prevented from learning them simply by lack of financial means." Mr. Chamberlayne presents in an interesting manner the manner in which this idea should be worked out. He believes some such reform is necessary in order that the people of the country may feel a restored confidence in the legal profession.—*Green Bag*, September, 1909. Vol. 21, pp. 436-444.

PUBLIC LIBRARIES.

The Legal Status of the Public Library in the United States. Bernard C. Steiner.

The public library is held by the courts to be "an association or institution of learning" (These words are quoted from a decision by Judge Mitchell, of Pennsylvania); and it is also a public charity. In both cases the library classes with the universities, and the courts have followed the trend of public opinion in thus classing them; for the people have found in the public libraries large and small, institutions which are charities in the better sense, and universities in the broader sense, where the mind is free to follow the greater or the lesser light, and each receives his own according to his capacity.

As such benevolent institutions they have been exempt from taxation, in some cases, even, their property not in actual use for the purposes of the library, being exempt, though not in all jurisdictions. The control of these libraries, while generally local, is, in most states regulated by Statute, under which the municipality works. So important has this legislation been that it seems much more might have been said in regard to it, as the courts have taken these statutes into consideration in their opinions.—*American Law Review*, July-August, 1909, pp. 536-546.