

## BOOK REVIEWS.

THE EQUALITY OF STATES IN INTERNATIONAL LAW. By Edwin DeWitt Dickinson, Professor of Law in the University of Michigan. Harvard Studies in Jurisprudence, Volume III. Harvard University Press, Cambridge, Mass., 1920, pp. xiii, 424.

This, the third volume in the Harvard Studies in Jurisprudence, is an admirable example of the value of those learned monographs which appear in such profusion from the presses of the States and Germany but are so conspicuous by their rarity in Great Britain. Dr. Dickinson, who is Professor of Law in the University of Michigan, has made a real contribution to clear thinking, and his work should be carefully studied by all who are concerned in international organization. We are still kept back by the premature birth of the attempt to apply in practice the abstract idea of the equality of states in international relations. As Dr. Dickinson says: "It is a curious circumstance that in the law of nations what would seem to be the natural course of development has been turned about. Through the powerful influence of certain theories . . . an absolute equality of capacity for rights among international persons was established as a fundamental postulate when the science was still in a primitive stage. The subsequent history of international relations shows a continuous struggle to impose limitations upon that equality."

Text-book writers upon international law are peculiarly prone to repeat the statements of their predecessors without verification. They have fallen into a careless way of attributing to Grotius the theory that states have equal rights by the law of nations. Now Grotius was a practical man, not a mere theorist, and Dr. Dickinson shows convincingly that Grotius was not the father of this theory. The true parents were Grotius' successors, the naturalists, Pufendorf, Barbeyrac, Rutherford and their followers, who derived their inspiration from Hobbes and, unlike Grotius, identified the law of nature and the law of nations. "An illuminating chapter might be written," says Dr. Dickinson, "on the contributions of Thomas Hobbes to the unreality of international law." The naturalists were more concerned with the perfecting of an abstract idea than with the practical realities of their times. International law, on the other hand, is becoming increasingly positive. Dr. Dickinson has traced the historical development of the theory with great thoroughness and made a subject which in many hands would become dull, exceedingly interesting. Incidentally it may be stated that he does full justice to the contribution made by Moser to the conception of international personality.

There has been so much confused thinking upon the topic that Professor Dickinson does well continually to reiterate that equality in the sense of equality before the law or the equal protection of the law must on no account be confused with equality of rights or, more strictly, equality of capacity of rights. Equality before the law is essential to the very idea of international legal relations; it is presupposed in the writings of Grotius

as it must be presupposed in the writings of every international lawyer. But it is quite consistent with inequality of capacity of rights. As our author points out (p. 336), "no civilized state has ever tried to combine universal suffrage, the folk-moot and the *liberum veto*." It is quite impossible to give practical application even in municipal law to equality in the second sense; yet it is a claim to this kind of equality which is persistently made by some of the smaller states at Hague Conferences and elsewhere.

Dr. Dickinson makes a distinction between the legal equality of states in their mutual relations and their political equality (*e. g.* as regards representation, voting and contributions) in whatever pertains to the development of international organizations (*e. g.*, conferences, administrative unions and tribunals). This distinction he calls fundamental. Two very useful chapters are devoted to the consideration of the internal and external limitations upon the legal equality of states, the first arising from the organization of the state, the latter from the relationships into which it has entered with other members of the society of nations. The book was written during the war, but Dr. Dickinson in an admirably exhaustive supplementary chapter discusses the equality of states in the Treaty of Paris. He points out that that Treaty (or treaties) takes account in several instances of internal limitations upon equality; this recognition adds practical significance to the equality of states as a legal principle. Full recognition is of course given to external limitations, and a new international relationship is created by the system of mandates. In thus frankly facing existing inequalities a substantial contribution has been made to the development of a system of rules which must become a more efficient instrument for the preservation of order and justice in the international community of the future. "Equality of legal capacity is the ideal towards which the practical rules of the law of nations can only approximate" (p. 152). It is valuable as an ideal; but, at present, advance towards the goal can only be made by frank recognition that it has not yet been reached.

Equal political capacity is, according to Dr. Dickinson, evidenced by (1) equality of voting strength; (2) the requirement of unanimity; (3) the limitation of Congresses, etc., to a decision (to use an expression of Dr. Scott's) *ad referendum*. To the present writer it seems that political equality is compatible with a Congress consisting of delegates with plenary powers who shall be bound by a majority vote. And it is difficult to assent to Dr. Dickinson's contention that the principle of equality is violated by giving the self-governing dominions of the British Empire a separate vote; for they are in effect independent states. India and the Crown Colonies stand on a different footing. These being the tests which Dr. Dickinson applies, he rather cynically but quite truthfully points out that conferences based on equality have been concerned in the last century chiefly with technical, administrative or non-political affairs, but those conferences which have been deemed of vital importance have met upon a basis which denies political equality.

Dr. Dickinson's conclusions will carry general assent. Equality before the law is absolutely essential to a stable society of nations; it is consistent with inequalities of representation, voting power and contributions in inter-

national relations. Equality of political capacity is on the other hand not essential. "Conceding that equality of capacity for rights is sound as a legal principle, its proper application is limited to rules of conduct and to the acquiring of rights and the assuming of obligations under those rules. It is inapplicable in its very nature to rules of organization. Insistence upon complete political equality in the constitution and functioning of an international union, tribunal or concert is simply another way of denying the possibility of effective international organization." (p. 336). The outstanding feature of the Peace of Paris in this respect "is its extensive disregard for the traditional conception of political equality" (p. 348). If the League of Nations makes good, "the traditional conception of political equality among states will become obsolete" (p. 365), but the biggest step in history will have been made towards true equality by the substitution of orderly process for self-help—in the language of Erasmus, "the irrational and doubtful decision of war." In the light of these conclusions it is interesting, but not altogether reassuring, to learn that M. Barbosa, the most vigorous exponent of unqualified political equality at the Second Hague Peace Conference, has just been elected at the top of the poll to a seat in the International Court of Justice.

Dr. Dickinson's book is in fine a weighty and readable contribution to the study of the whole law of international persons and status. And its utility is considerably increased by an exhaustive bibliography and a good index.

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TRUST ESTATES AS BUSINESS COMPANIES. By John H. Sears. Vernon Law Book Company, Kansas City, Missouri, 1921. Second Edition, pp. xx, 782.

In a partnership the partners control and manage the business of the firm and are personally liable for the firm debts. In a corporation the stockholders, through directors chosen by them, manage the business of the corporation without liability for the corporate debts. In a "business trust" the trustees manage the business of the trust for the benefit of cestuis who are not personally liable for the debts of the trust. The last mentioned form of organization has long been domiciled in Massachusetts, and has of late begun to spread throughout the country. Of course the idea is nothing new. For a long time certain unincorporated associations, not amounting to partnerships, have conducted their affairs through trustees vested with the legal title to the association property. Notable instances of such arrangements are the Inns of Court, the London Stock Exchange, Lloyd's Insurers and countless social clubs. Also sometimes the assets of an unsuccessful business have been transferred to trustees for the purpose of carrying on the business for the benefit of its creditors, as well as for the original owners of such business. So, too, occasionally a testator has provided in his will that his trustees to whom he has bequeathed the property employed in

his business, should carry on such business for a designated time after his death for the benefit of the widow and children or other legatees of the testator. Again, at one time in our national history, a familiar method of combining large enterprises under one control, usually for a monopolistic purpose, was by means of the trust, and it is this practice which has given to the word "trust" a certain unsavory connotation in the mind of the layman.

It was in Massachusetts, however, chiefly because of certain limitations in that state's corporation laws, that it became a common practice to create trusts with the interests of the several cestuis evidenced by transferable shares for the express purpose of buying, developing and selling real estate, which device was soon extended to cover many varieties of business enterprises. This practice, as suggested above, is now being adopted in other jurisdictions. Our author's citations show that in about half our states such business trusts have come before the highest courts, and in his introduction he gives a formidable list of business enterprises of various sorts and variously located, which are conducted in this manner.

It is still true, however, that in Massachusetts the business trust finds its chief home, as is witnessed by the fact that out of the sixty odd cases on such trusts cited in the present edition of this work as having been decided in the past decade, that is since the appearance of the first edition, over one-third are decisions of the Massachusetts Supreme Court or of the Federal Courts upon associations doing business in Massachusetts. The other late decisions cited include a considerable number of New York cases and one or two decisions each from a dozen other states.

The first edition of this book which appeared in 1912 was a pioneer in the field. Since that time have appeared Wrightington's "Unincorporated Associations," which is devoted in large part to business trusts, as well as several smaller books and a considerable amount of material in the legal periodicals. The present edition of the book under review contains some twenty-five new sections out of a total of two hundred and four, and of the old ones about a dozen have been rewritten or considerably added to. One entire chapter of this second edition is new, that upon "Public Policy with Respect to Trust Estates Embarked in Trade."

The text discusses adequately those phases of the general law of trusts which are applicable to business trusts and considers with great detail the decisions on business trusts proper. While the method employed by the author of quoting at length the language of the courts leads to a considerable amount of repetition, nevertheless it makes possible a fully rounded discussion of each one of the matters successively taken up, so that the reader in search of the law upon one point is not forced to follow out a chain of cross references. It is to be regretted that in many instances the author, whose experience makes him well-qualified to express an expert opinion on the matter, refrains from expressing his own view as to what the law is or should be, but contents himself with a statement of the rules as expounded in decisions of the courts. Mr. Sears appears to consider a business trust as being simply one phase of development of our ordinary trust, and nowhere does he discuss the interesting suggestion made by Wrighting-

ton (*op. cit.*, p. 59) to the effect that perhaps the business trust, while neither partnership nor corporation, is nevertheless not a true trust but should rather be considered as *sui generis*. Only a very few of the late articles and editorial notes upon business trusts, which are found in the various legal periodicals, are anywhere referred to by the author, although they might well prove highly interesting and useful to the persons who consult his text.

Some three hundred pages of the book are devoted to an appendix which includes the Massachusetts and Oklahoma statutes governing business trusts, and a very extensive collection of forms of trust agreements, including many which are not found in the first edition. Whenever a particular trust agreement has withstood attack in the courts, that point is carefully noted and the decision cited. The author wisely prefaces this excellent collection of exhibits by calling attention to the fact that they are useful primarily by way of suggestion and must not be slavishly copied. He also points out at another place that counsel should venture to advise clients upon matters involving business trusts only after a very careful study of the legal principles involved. This word of warning is justified, for Mr. Sears shows how very narrow is the path along which an organization must travel in order to retain its character as a business trust. If the least control, or even power of control over the management of the business of the association, or its termination, is left to the cestuis, the late cases hold that the association is in fact a partnership, and the several cestuis are liable as partners. *Frost v. Thompson* (1914), 219 Mass. 360; *Priestly v. Trasurer* (1918), 230 Mass. 452.

The book contains a very full index which has the novel and useful feature of showing just what points have been passed on in each of our different states where cases involving business trusts have come before the courts. The sections in the second edition have been renumbered. Those who are familiar with the first edition, or who have to check up references thereto, would doubtless have been glad of a table showing the relation of the old section numbers and the new ones.

The excellent press work of the publisher contributes to the production of a book which will certainly be of great value to the lawyer who may be professionally interested in the subject and which will doubtless serve to increase the popularity of trust estates as business companies.

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THE LAW IN BUSINESS PROBLEMS. By Lincoln Frederick Schaub and Nathan Isaacs. The Macmillan Company, New York, 1921, pp. xxxiv, 821.

This book presents a new method for the study of commercial law. It combines historical, case and analytical systems. Heretofore works on the subject of "business laws" have been confined to short treatises on topics selected from elementary law as a whole. Mr. Schaub is Professor of Com-

mercial Law in Harvard University and Mr. Isaacs is Professor of Law in the University of Pittsburgh. The positions of the authors and the sub-heading, "Cases and Other Materials for the Study of Legal Aspects of Business" leads one to the initial idea that the book is intended exclusively for the use of students attending courses in commercial law.

Examination of the preface and text will prove the value of the work to any business man or lawyer. The many points of view presented on each subject stimulates a healthful respect for the difficulties of solving legal problems and applying them to actual business affairs. This feature is suggested by the title "The Law in Business *Problems*." If a layman learned nothing more from this book than the "nature and sources of the law" as discussed in Chapter I, he would add materially to his understanding of law as applied to business. It would at least give him the proper perspective in discussions with counsel, and he who understands the reasons for the "uncertainties of the law," cannot fail to appreciate the services of the lawyer who so thoroughly knows his subject that he can afford to be in doubt about it.

Introductory topics of the book include an explanation of the nature and sources of the law, the scope and classification of business law and the use of cases both as precedents and as a means for study. Engaging in business is treated with relation to the legal status of the business man, limitations imposed by law on the privilege of trading and the duty to serve the public. The subject of contracts is properly given great prominence, since this branch of the law is the one with which the business man is ordinarily most concerned. The topics under this head are the making of contracts, their operation and interpretation, and their enforcement. Under the heading of business organization, agency, partnership and corporations are discussed with relation to formation, operation, dissolution and accounting. The Appendix contains a table of uniform state laws affecting business and a list of subjects of state and federal legislation. The table of cases is preceded by a clear explanation of the practical uses of this adjunct to a law book. Many a lawyer fails to use such a table because he does not understand how easily and practicably it can be employed in the search for cases on particular subjects and in tracing the history of a particular case. Every experienced practitioner knows that to find the law is the greater task. To see the law as an entirety and to trace essential elements from one subject to another is an ability attained by few in this busy age. To memorize portions artificially selected and set aside as sufficient for their needs, is the usual method of teaching "commercial" or "business" law to business men. Securing both these results in one volume, by projecting the theories and methods through which the law actually operates and is applied to business affairs, with close-up views of particular subjects, to use moving picture expressions, is what Professors Schaub and Isaacs have accomplished. I like the book principally because it gets away from the assumed certainty and fixity of the usual elementary work and shows the difficulties and the conflicts of law that are encountered in actual practice.

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GOVERNMENT CONTROL AND OPERATION OF INDUSTRY IN GREAT BRITAIN AND THE UNITED STATES DURING THE WORLD WAR. By Charles Whiting Baker. Being No. 18 of the Preliminary Economic Studies of the War. Published by the Carnegie Endowment for International Peace. Oxford University Press, New York City, 1921, pp. 138.

The author, a consulting engineer and former engineering magazine editor, has presented in the brief compass of one hundred and thirty-four pages a remarkably fair, impartial, and highly valuable estimate of the results of government operation of industry during the war. He surveys the problems and the results secured in the management of railways, shipping, labor, capital, supply, food and fuel, in America, with some comparative notes on English experience.

Mr. Baker points out that the popular judgment of complete failure in all these fields is the reverse of the truth. On the railways, for example, the unfavorable verdict is based on huge railway deficits and higher charges. But both of these are due to enormous increases in labor and material costs which occurred in all industries and would have certainly arisen under private management of the carriers. The author even compiles figures to show that no part of the higher labor cost is due to government management. On this point he will not be convincing to many readers.

He further contrasts the steam railways under government management with the street and electric lines under private direction and shows that the latter are in worse financial condition than the steam roads. The shrinkage in the value of the dollar and the public failure to realize this shrinkage are assigned as leading causes of the predicament in which all utilities find themselves regardless of public or private management.

The author criticizes many changes made by the railway administration, and the method of making them. He points out that if permanent public management were established we must expect political appointments, or promotions by the mechanical Civil Service rules, and the interminable delays of Congressional action; also an exodus of able men from the service because of lower salaries. Government shipbuilding and ship operation were wasteful and inefficient, but secured results that could not otherwise have been obtained. Neither seems adapted to peacetime conditions. Government direction of capital supply and credit was vitally essential and its results were satisfactory.

The public management of labor supply has been severely criticized on the ground that general conscription and assignment to labor tasks should have been established, and that undue favors to the unions were granted by the government during the war. Also it is pointed out that the government often interfered unnecessarily in disputes. Mr. Baker points out that labor conscription was a political impossibility at the beginning of the war, and that only government action prevented a greater increase in wage rates and a further reduction in output than actually took place. Public operation of telephones and telegraphs seems to have brought no results that could not have been secured by private management. Among the outstanding results of government operation, Mr. Baker notes some important economies in opera-

tion, a great stimulus to production, and a frank recognition by government of the decline in competition. Public officials relied upon the trade associations for harmonious co-operation, and secured it. Much of the public criticism of government management is chargeable to the natural fear that it might be continued in peace time, to political partisanship, which has always attacked war administrations, and to the general reaction among the people against all forms of war control.

The revival of private control of industry must necessarily bring with it an increase in the demand for government regulation in place of government operation. Those who look with understanding eyes on the social and economic problems of the time "see clearly the necessity of meeting the increasing power of business and class organizations with an increasing authority of the government, representing the whole people, to protect the public interest."

Lawyers will read with deep interest the concluding chapter on the conflict between the Executive and Legislative branches. The author shows in an illuminating way the vital need of executive leadership in all crises and then points out that the same forces are now operating to raise the executive to a permanent position of leadership through the rapid and steady increase of government functions. Criticism of executive usurpation always arises in the aftermath of a crisis, yet executive leadership is now becoming a permanent institution.

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HANDBOOK OF THE LAW OF TRUSTS. By George Gleason Bogert, Dean of the College of Law of Cornell University. West Publishing Co., St. Paul, Minn., 1921, pp. xiii, 675.

The object of this book, as stated by the author, is to give to practitioners and students a compact summary of the fundamental principles of the American law relating to trusteeships. The book is well written; the style excellent. Mr. Bogert knows his subject thoroughly, and his statements of legal principles show the results of painstaking care.

At the head of each section is a short statement of the legal principles, or definitions, or facts, which are elaborated in the text. Printed in heavy type they will be of aid to the student reviewing for an examination, or to the lawyer desirous, for one reason or another, of rapidly refreshing his memory on the salient features of the law. Whether the lawyer will, as is desired by the author, "gain starting points for research into the more recondite and complicated questions," will of course depend on the lawyer. Recondite and complicated questions of law are not easily mastered except by those who have followed step by step the growth of fundamental principles.

With the author's statement that the law student will "find in the book sufficient material to furnish him with the ground-work which is the maximum possible of attainment in his preliminary studies," we must take exception. The book, read carefully, will give to any intelligent person a great



deal of well-arranged and correct information on the American law of trusts, but, we submit, that there is a wide difference between information regarding a legal subject, and a foundation on which to rest a knowledge of its fundamental principles. That kind of ground-work, which is the only kind of ground-work which it is worth while for the student who looks forward to the practice of law to have, can be given alone by careful discussion of cases which show the historical growth of the principles. Such a ground-work a student can get in a good law school; but not either in or out of a law school from books written from an informational, didactic and systematic arrangement point of view.

All this, however, is not a criticism of Mr. Bogert's book, but of one of the statements he makes in his preface. From the criticism the reader of this review must not imply that we think that the book is not useful to students. It is useful; but like other well and carefully done law books of this character, we believe its real use to the student lies in the fact that if read after, and not before, he has gained a real ground-work of the subject by intensive study of well-selected cases, it will give him that information on many matters of practical importance which he rarely obtains from a "case course," because detailed and systematically arranged information is not the object of such a course.

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THE PREPARATION OF CONTRACTS AND CONVEYANCES WITH FORMS AND PROBLEMS. By Henry Winthrop Ballantine, Professor of Law in the University of Minnesota. The Macmillan Co., New York City, 1921, pp. 227.

The translation of knowledge into power is usually embarrassing to the inexperienced practitioner, who is apt to discover that, although he has filled his quiver with excellent arrows, he frequently fails to bring down his quarry because he has not learned how to shoot. Students of law should be able to use the store of legal principles through knowledge of legal mechanics in contentious and non-contentious transactions. Courses in practice are intended to train the neophyte in the appropriate methods and ritual of the law so that his appearance on behalf of his client will enable him to do the right things and say the proper words in order to translate the principles of law appropriate to his case into the dynamic force necessary to win it. There are those who still seem to think that it is easy to do justice and that, given good intentions, all difficulties may be overcome without much regard to ways and means. It is a cruel fact, however, that formalism is essential in this actual world of ours, however smooth and formless may be the path of right in the world to come. Professor Ballantine has added another to the many excellent works for which doctor and student have to thank him. He has surveyed the field of contracts and conveyances and has offered in this book a volume of immensely valuable practical advice to enable the beginner to find his way in the preparation of documents most likely to be used in ordinary office work, such as contracts of employment

and of sale, building contracts, articles of partnership, and other business documents, those relating to real estate and corporations, and wills. The forms, which alone would be of lesser value, are accompanied by suggestions and warnings and points to be noted, as well as by problems stated for the purpose of testing the student's ability to do original work. The book may be cordially recommended to students of law as one that will help them materially in a difficult field of their work as young members of the bar.

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SALE IN ROMAN DUTCH LAW. By G. T. Morice. Published by T. Mas-kew Miller, Cape Town, South Africa, 1919, pp. 247.

This book is primarily designed as a practical text-book on the South African law of sales. The author has, however, for purposes of comparison, appended to each chapter a reference to the English, French and German law on the topic immediately under discussion, that the lawyer may be "saved from imagining that those (rules) to which he is accustomed, are the necessary embodiment of wisdom." These references are, however, very brief, and are rarely accompanied by any discussion as to the relative merits of the Dutch and the other systems treated, the reader being left to draw his own conclusions from a mere statement of the differences.

The differences in the various systems of law are noted only in connection with the treatment of general principles of the Dutch law, it being manifestly impracticable in a book of this size to treat in detail the foreign law.

The book purports to cover the whole South African law of sales, including the statute law and judicial decisions, and makes the American reader yearn for a return to the day when the whole American law of sales could be treated in two hundred and fifty pages, with a citation of two hundred and seventy-six cases.

The subject is treated in seventeen chapters, the titles to which, with the exception of Chapter 14, "*Laesio enormis*," read familiarly to the American lawyer; and in a few States we have a modified form of the doctrine in the maxim, "a sound price demands a sound article." The doctrine has, however, been abolished by statute in Cape Colony and in the Free State and is in force only in the Transvaal and Natal.

In the French law the doctrine still exists in relation to sales of personal property, and the vendor who has been prejudiced to the extent of more than seven-twelfths of the value of the article sold is entitled to a rescission of the sale or to an increase of the price.

There is, of course, no mention of the subject of lien, a topic that plays so important a part in our law of sale; for since under the Roman and South African law title to property sold does not pass until delivery, there is no need for the doctrine of lien. Our author thinks that the same reason makes unnecessary the doctrine of stoppage in transitu, which has been introduced by statute into the law of two provinces—Cape Colony and the

Free State. But he admits that "there are exceptional circumstances in which it may prove of advantage" (p. 207). Indeed his treatment of this doctrine is not very satisfactory. If, however, the South African law was deficient in failing to give the seller the remedy of stoppage in transitu, it afforded to the buyer the valuable remedy of specific performance. This was not, as in English law, confined to cases where the thing sold possessed some special beauty, rarity or interest, but was operative as a matter of right in all cases.

The author's style is clear and concise and he has succeeded in a rather remarkable way in giving the reader in the short compass of two hundred and forty-seven pages, a readily understandable view of the South African law of sales with a comparative view of the salient points of the Roman, Roman-Dutch, English, French and German law of the subject.

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HANDBOOK OF THE LAW OF SALE OF GOODS. By John Delatre Falconbridge. Canada Law Book Company, Toronto, Canada, 1921, pp. xxiv, 174.

The English Sales of Goods Act of 1893, which codified the law of the sales of personal property in England, has been adopted, with modifications, in all the provinces of Canada, except Quebec. Ontario, the last province to adopt it, enacted it in 1920. The design of this book, as stated by the author, is to make the statute more readily available and more useful in Canada.

In order to carry out his first object—to make the statute more readily available—the author has reprinted the statute, section by section, with brief notations of the difference in language, where differences occur, between the English and Ontario statutes and the like statutes in force in the other provinces of Canada, and in the Uniform Sales Act in force in some of the United States. The arrangement sometimes follows the order of the sections of the English statute, sometimes that of the statute of Ontario, as seemed to the author best suited to the development of the subject matter.

To effectuate his second object there precedes or follows each section, explanatory matter, or a statement of the law applicable to the subject matter of the section, or both. These statements are, in the main, very brief statements of a general rule of law, the reader being referred to text books or decided cases for the details, variations, or application of the general rule.

The book is not a treatise on the law of sales, or even a horn-book; it is, as its name implies, a hand-book of the subject.

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