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Handbook of the Law of Sales, by Lawrence Vold

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BOOK REVIEWS

Handbook of the Law of Sales. By Lawrence Vold. Hornbook Series. West Publishing Co., St. Paul, Minnesota, 1931.

Many of us who are interested in Sales have been noticing a number of articles on various aspects of this phase of the law which have been written by Professor Vold for various legal magazines in the last few years. We are now pleased to find a complete Hornbook in this subject from his pen, incorporating the many excellent ideas set forth in those articles, as well as covering other parts of the subject.

The author has avowedly written from the popular "functional" standpoint. There is always a very real interest in a textbook which adopts this method of approach, though one is inclined to feel that it might perhaps fit better a longer and more detailed work. For instance, some of the very limited space available is used in a discussion of the question whether the so-called presumptions as to the intention of the parties with respect to the passage of title are real rules of presumption or are schemes for distributing the business risks. The truth would seem to be that these rules perform both functions; but at any rate, the distinction is surely verbal and there is no difference in the practical results to which these ideas lead. Similarly fruitless from a practical standpoint is the long discussion as to the "real" basis for the undoubted rule that a fraudulent buyer, or other person having a legal title but subject to an equitable obligation to hold the goods for another, may nevertheless pass an indefeasible title to a good-faith purchaser for value. Whatever the basis of the rule, it exists, and no one, our author included, has any real doubt about it. Such verbal fencing seems to be a frequent activity of our self-styled "realists," but in this necessarily brief book there is hardly room for it.

A natural result is that the discussion of some serious practical problems is less detailed than might perhaps be wished. The reviewer is glad to concede, however, that this defect is far less apparent than might have been expected. The only serious omission which was noted is that there is no discussion of the very troublesome question of the passage of title in a sale which is unenforceable because of failure to comply with the Statute of Frauds. It is suggested, however, that in spite of his detailed discussion of the problem relating to the recording of chattel mortgages, the author has failed to notice the most troublesome practical difficulty—namely that of identifying the mortgaged property.

There are also, as might be expected, certain questions discussed in the book as to which the present reviewer does not concur in the author's conclusions. For example, the reviewer finds it difficult to take seriously the suggestion that the proper

protection of infants requires that they be permitted immunity from liability on contracts or sales which they have brought about through their own willful misrepresentation of their age. It seems also that the author, while stating the preferable view as to the solution of the problem which arises when chattels sold by conditional sales are attached to realty then or subsequently mortgaged, has failed to point out adequately the great confusion of the authorities on this point. More serious still, is the failure to show the confusion arising from the unfortunate fact that the term "conditional sale" is used in the law of mortgages with a precisely opposite meaning from that which it bears in the law of sales.

The book contains a detailed discussion of the important subject of trust receipts, but here too the reviewer cannot wholly concur in the author's ideas. In the first place, it seems that his analysis of the legal aspects of the transaction is unnecessarily complicated. Then, while it must be admitted that the courts ought to distinguish sharply between bi- and tri-party transactions, there are quite a number of cases where they have failed to do so. Most important of all, the reviewer is not yet convinced that the policy which requires the recording of chattel mortgages as a protection to *bona fide* incumbrances of the goods, should not be extended to trust receipts. The economic situation, and the danger of misappropriation by the one intrusted with the goods, seems much the same in both cases. The author concedes that his economic argument must lead to the conclusion that recording should not be required in the case of purchase-money chattel mortgages, but is compelled to admit that the authorities are against him on this point.

Professor Vold suggests that a sharp distinction must be made between promissory warranties and warranties "imposed by law." No doubt some such distinction would be helpful, but this terminology seems subject to criticism. In the absence of special statutes, the law does not "impose" any warranties, though perhaps it should. The truth seems to be that this is a case of real "implied" warranties, and such implication can of course be expressly negated. At any rate, whatever may be the validity of this distinction, the reviewer is convinced that the authors' attempt to justify *Wallis v. Pratt* (1910), 2 K. B. 1003, by using it, is doomed to failure. If this case is to be supported, it must be under the peculiar provisions of the English Sale of Goods Act.

One other protest which the reviewer desires to register is against the calling of the doctrine that the service of food amounts to a sale of the food, a "fiction." It is submitted that the fiction is in denying the existence of a sale. But this too is, or ought to be, a merely verbal dispute. The author and the reviewer are in agreement that the restaurant-keeper should be held to at least the same burden of implied warranties that are provided in the Sales Act with respect to the sellers of other commodities.

Perhaps too much emphasis has been laid upon these controversial points. Whether this is so or not, it must be emphasized that this is an excellent book. It does not, of course, take the place of the much fuller treatise by Professor Williston; nor was this intended. But the practitioner will find a thorough, if brief, discussion of all the important questions in this subject; and anyone interested will gain, through consulting the book, the stimulus of a careful and thoughtful discussion of nearly all difficult and uncertain matters. The notes are excellent, and without making the absurd attempt to refer to all the authorities, cover the leading cases and give one sufficient basis for further investigation.

Finally, the book is convenient and usable. It has a detailed table of contents, a good index, and a complete table of cases. With these aids, consultation is easy and satisfactory. No matter how often and how emphatically one may disagree with the conclusions reached by the author, the fact remains that he has produced a careful and thoughtful, and a useful, piece of work. The Hornbook Series has had an addition worthy of the best of its predecessors.

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