

A CONCISE LAW DICTIONARY, 5th ed. By P. G. Osborn, LL.B. [London: Sweet and Maxwell. 1964. vii + 393 pp. 25s.]

Osborn's Concise Law Dictionary has proved a useful source of information for students. It includes many succinct definitions of legal terms as well as translations of latin maxims and phrases.

The book is doubtless of assistance when a student or lawyer wishes to clarify the meaning of new (or forgotten) terms or phrases. But it should be borne in mind that no dictionary, even if very detailed, can replace a textbook. It should be treated as a reference book for clarifying terminology, and not as a treatise. This is mainly due to the fact that a legal definition, even if accurate in itself, cannot always cover all the problems that might arise. For example, "Banker" is defined in *Osborn* as

A person who receives the money of his customers on deposit, and pays it out again in a manner agreed upon. It includes a body of persons, whether incorporated or not, who carry on the business of banking . . .

This is an acceptable definition, but it leaves one thing unclear. It indicates that persons who carry on banking business are bankers. But it does not clarify what is "banking business". On this subject a person will obviously have to consult a book on banking law, and thus pursue the definition. The dictionary can thus assist only in the first steps of solving a legal problem, by explaining the meaning of terms.

Although most definitions of the dictionary are accurate, reference should be made to a few exceptions. Thus, in the definition of "bill of lading" the learned author states:

It is a document of title transferable by endorsement and delivery, giving the holder the right to sue thereon, but it is not a negotiable instrument, so that a transferee obtains no better title than the transferor has.

While it is true that a bill of lading is not a fully negotiable instrument, the last part of the definition is slightly inaccurate. A transferee of a bill of lading does not obtain a good title if the transferor has no title, e.g. is a thief (*Gurney v. Behrend* (1854) 3 E. & B. 622 at pp.633, 634) but might obtain a good title if the transferor has a defective title, e.g. is an agent who should not transfer the bill of lading ("*The Argentine*" (1867) L.R. 1 Ad. & Ec. 370; *Glyn, Mills Currie & Co. v. East and West India Dock Co.* (1882) 7 App. Cas. 591).

The definition of "cesser" while succinct is, it is submitted, incomplete. The learned author refers to provisos in settlements, but might perhaps also have referred to cesser clauses in charterparties (see, e.g., *Scrutton On Charterparties and Bills of Lading*, (17th ed., 1964), at p. 158 *et. seq.*).

In the definitions of "covenant" and "deed" the learned author might have pointed out that such agreements do not require consideration. The learned author mentions this fact in his definition of "contract", but since neither of the former includes a cross-reference to "contract", it might have been useful to repeat the special position concerning lack of consideration.

“Indorsement” is very clearly defined but reference might have been made to the provisions of the Cheques Act, 1957 as regards the consequences of the absence of an indorsement on the position of paying and collecting bankers.

The definition of the term “letter of credit” appears to be incomplete. It reads: “An authority by one person to another to draw cheques or bills of exchange (with or without a limit as to amount) upon him, with an undertaking to honour the drafts on presentation. An ordinary letter of credit contains the name of the person by whom the drafts are to be negotiated or cashed: when it does not do so, it is called an open letter of credit.” First, a letter of credit may involve an advance of cash, in which case no draft is involved. Secondly, this definition overlooks the difference between the general or traveller’s letter of credit — which falls within the scope of the definition — and the documentary or commercial credit which operates in a different manner. It might have been useful to explain the distinction between these two instruments and possibly to include a separate definition of the commercial credit, *e.g.* the definition in General Provision *b.* of the Uniform Customs and Practice for Documentary Credits, (1962 revision).

In his definition of “misrepresentation” the learned author distinguishes between fraudulent, negligent and innocent misrepresentation. He points out that when any of these occurs the aggrieved party is entitled to sue, *inter alia*, for damages. There is no doubt that, in view of *Hedley Byrne & Co., Ltd. v. Hellers & Partners*, this is true as regards the negligent misrepresentation, but it is to be doubted whether this is the position in the case of an innocent, non-negligent, misrepresentation.

Exceptions may be taken to the definition of “negotiable instrument” which reads: “An instrument the transfer of which to a transferee who takes in a good faith and for value passes a good title, free from any defects or equities affecting the title of the transferor. . . . Negotiability may be conferred by custom or statute, and restricted or destroyed by the holder of the instrument.” In the first place this definition overlooks one important characteristic of negotiable instruments, *i.e.* that any holder (even one who is not a holder in due course) has a right to bring an action on such an instrument in his own name (see, *e.g.*, s.38(1) of the Bills of Exchange Act, 1882). Secondly, the definition does not stress another important feature of negotiable instruments, *i.e.* that they may be transferred by indorsement and delivery, or, if they are bearer bills, by mere delivery (Bills of Exchange Act, 1882, s.31(2), (3)).

I should, however, be again stressed that most of the definitions of the book are accurate and that students will find them useful.