

POLLOCK & MULLA — THE SALE OF GOODS ACT AND THE PARTNERSHIP ACT. 3rd Edition. By D. N. Pritt. July 1966. [Tripathi: Rs. 25.00].

The last edition of this important textbook on the Indian Sale of Goods and Partnership Acts was in 1950. After a lapse of sixteen years there is in consequence considerable scope for updating and revision. The great disappointment of the new edition is that the opportunity has not been taken. Reference to recent decisions, Indian, English or Commonwealth are noticeably infrequent. The treatment of some aspects of the law appears to be misleading and inadequate.

To take one limited sample, — on the Sale of Goods Act 1930, there have been a considerable number of Indian Supreme Court decisions between the year 1960-1965. Almost without exception these cases have been omitted entirely — not even a footnote reference being made.

Admittedly not all these cases are worthy of comment in the text. But since this book is intended for practitioners as well as students (editor's preface) it is surely important that the most up to date material should be included at least for reference purposes. Also there seems to be no good reason for expecting students to learn their law without reference to modern case material or, at least, a ready access to it. Further some of the cases deserve more extensive comment. *Carl Still v. State of Bihar*¹ on the distinction between contracts for work and contracts for materials seems more relevant than the somewhat unreal example given by Blackburn J. in *Lee v. Griffin*² which is accorded prominence in the text (at p. 25 item (6)).

Under ss. 59 & 61 *Union of India v. A.N. Rallia*³ is omitted although it affords a graphic and important illustration on the question of recovering incidental expenses and interest by way of damages.

On s. 18 (transfer of property in unascertained goods) there is virtually no reference to Indian decisions and none at all later than 1948. The recent case of *Jute & Gunny Brokers Ltd. v. Union of India*⁴ receives no mention.

Similarly in the commentary on the Partnership Act 1932, under s. 22 there are only two case references. Both are English, one decided in 1906 and the other in 1920. Yet in *Devji v. Magan Lal*⁵ the question of when a partner's execution of an instrument binds a firm formed part of the *ratio decidendi* and was discussed at some length with reference to relevant Indian case material.

Even where recent decisions are referred to the treatment is not always adequate. The important case of *Thiagaraja v. Muthappa*⁶ receives one brief mention under S. 7 (partnerships at will) and none at all under ss. 39-44 (Dissolution) although it is equally relevant in this later connection.

The reference to this case under s. 7 (p. 293) is also somewhat misleading. It fails to explain adequately that the Court implied into a partnership agreement the necessary provisions relating to duration and termination of the partnership by reference to a separate managing agency agreement where the managing agency was the subject matter of the partnership.

Another instance of treatment which can lead to misunderstanding occurs in connection with s. 4 of the Sale of Goods Act in discussing the distinction between contracts of sale and contracts for work (pp. 24-26). Here it is implied that the

1. A.I.R. 1961 S.C. 1615.

2. (1861) BO L.J.Q.B. 252; 4 LT 546.

3. A.I.R. 1963 S.C. 1207.

4. A.I.R. 1961 S.C. 1215.

5. A.I.R. 1965 S.C. 39.

6. A.I.R. 1961 S.C. 1225.

distinction does not have much relevance today in India. But this implication is doubtful in view of the litigation under the various State Sales-Tax laws where there have been a number of decisions which involve consideration of s. 4 of the Sale of Goods Act some depending on this very question of whether there is a contract of sale or a contract for work.

It should be added in all fairness that the overall approach is apparently an intentional one. In the preface Mr. Pritt states:—

The two Acts with which it (the textbook) deals are codifying statutes, and the primary duty of the Courts which have to apply them is to follow their texts rather than the rich learning that is to be found in the decisions of the Courts which the statutes have codified. It may thus seem strange at first sight that a substantial part of the book should be taken up with examples drawn from cases decided before the English codifying statutes of 1890 and 1893; but I have retained this arrangement, partly because I am sure that in case-law countries such as India and England students can get a better grounding in the law if they study the old cases, partly because judges and advocates derive great help from the old cases when they are faced with difficulties in the actual application of the statutory texts.

While it could be a matter of personal preference whether or not to accept Mr. Pritt's reasons for including a selection of pre-codification cases these reasons surely have no bearing on the importance of including up to date case-law after the event. On this point Mr. Pritt gives himself the lie direct in the first sentence quoted above. It is certainly the duty of the courts to "follow the texts". After a codifying Act "the rich learning . . . which the statutes have codified," becomes of secondary interest.

But how is the practitioner or the student — a future practitioner — to understand the way in which the Courts discharge their "duty" without a comprehensive grasp of the Court's decisions — with a strong emphasis on current trends in interpretation?

From the students' point of view it is not helpful to leave an implication that codification is synonymous with fossilization. This unfortunately is the likely result of the present editor's treatment.

From the practitioner's point of view it is important to have a comprehensive coverage of the case-law on any given aspect. At least he will want to ascertain whether there have been any court decisions which cover identical or similar fact situations to the problem in hand. Apart from leading cases the choice of material, if there has to be a choice, is surely better exercised in favour of the later rather than the earlier decisions? This emphasis is preferable not only for the general reason stated above but also for the very obvious and practical one that the later decisions usually give the researcher a sufficient lead to the earlier — but not *vice-versa*.

The cavalier treatment of cases is carried further by the fact that no references are given in the table of cases at the front which contains only case names. The references are set out only in the footnotes to the text. Searching for a case reference is thus rendered time consuming and irritating, particularly as the table does not extend to a footnote number but only the page on which the case can be found. Having found the page it is then necessary to search through the footnotes and possibly the text in order to locate the desired reference.

But cases are more favoured than statutes. The latter are not set out in table form at all. There is however a comparative table for the English and Indian Sale of Goods Acts and the Contracts Act 1872.