

POLLOCK AND MULLA'S THE SALE OF GOODS ACT (5th ed. 1990).

By R.K. Abhichandani. N.M. Tripathi Pvt. Ltd., Bombay. Pp. li+444. Price Rs. 125.

IT IS commonplace, that the quality of judicial decision-making largely depends on the materials that are presented to the judge, for arriving at a decision. A well-informed legal fraternity promotes the rendering of good judgments—judgments which are good in their content as well as style and can make a lasting contribution to the development of a consistent body of doctrine. The legal fraternity, in its turn, can do this task well if, and only if, it has available good legal writings. Such legal writings can consist, *inter alia*, of dependable and lucid commentaries. Dinshaw Mulla must have had all these aspects in mind when he set before himself the task of writing such commentaries. For his subject, he chose the “lawyers’ law”, including the great Anglo-Indian Codes—one of the achievements for which India will have to be grateful to its alien rulers. When he wrote his first commentary, case law in India was not very abundant. But he anticipated that it would grow in course of time. He also anticipated that future generations of lawyers will need a book that will not merely summarise the case law, but also offer helpful comments where necessary. Even more important than this, was the need for a book that would try to create a system out of chaos, introduce symmetry where there was none and maintain the logic and unity of the law on the subject to the maximum extent practicable. True to this ideal, Mulla has served as an unseen guiding hand for generations of lawyers. If someone decides to celebrate a centenary of legal writings by Mulla, and to elicit from members of the audience information as to when Mulla’s books started entering their family library, he is bound to meet more than one family where such books were used by the great-grandfather, the grandfather, the father (or the mother) and now, the young son or daughter.

The respectability so lent to well-established books increases the responsibility of its editors. Behind them is a great name, to whose memory they should be faithful. It is a pleasure to find that the burden of editing the book under review¹ has fallen on the shoulders of Justice R.K. Abhichandani of the Gujarat High Court. With the excellent academic credentials and rich judicial background that he has, proper discharge of the burden was expected, and the expectation has been more than fulfilled.

Anyone who has dealt with the subject of sale of goods knows that this is now an expanding theme. Though the Sale of Goods Act is the main source of rules, the law on the subject is now touched or affected by many other sources, such as the Consumer Protection Act, enactments relating

1. R.K. Abhichandani, *Pollock and Mulla's The Sale of Goods Act* (5th ed. 1990).

to unfair trade practices, and the like. Certain concepts basic to sale of goods have received their elaboration or clarification, not in the case law under the Sale of Goods Act, but in case law arising under the sales tax law or the Constitution. There have been equally extensive elaborations of certain other concepts, such as "goods", "documents of title" and so on. New commercial practices like the "invention" of credit cards and new social practices such as the sale of human "spare parts" have put a strain on the traditional framework of the law relating to sale of goods. All these have received due attention in the book.

Commercial law has started crossing national boundaries. Transnational contracts for sale are everyday occurrences. Knotty problems arose in the realm of the conflict of laws, with which scholars in the field tried to struggle. But the struggle often led to no concrete results. In any case, the businessman never knew where he stood, particularly where the issue was as to what was the, (i) substantive law applicable to a transnational contract; (ii) procedural law applicable for resolution of disputes; and (iii) forum to be for litigation or venue for arbitration in respect of such disputes.

To be able to draw upon such a rich storehouse of material, is no mean task. The present editor has been successful in utilising most of these new resources, while also making use, at the same time, of the conventional sources in the nature of Indian and English case law. There is hardly any doubt that the present edition maintains the quality of the original.

The editor has taken particular care to refer to international conventions. The Vienna Sales Convention, concluded in 1980 by UNCITRAL, is a significant milestone in the search for a set of uniform and transnational rules appropriate for the international trading community. No doubt, partly because of the participation of representatives from across the world, this convention has been well received. It has entered into force and has been ratified by, *inter alia*, USA and some EC countries. The convention is of great interest to both academics and practitioners.

Schlechtriem,² professor at the University of Freiburg, who was a member of the West German delegation to the sessions of the Vienna Conference, has written an excellent commentary on the convention. The convention is of use, in interpreting the implementing legislation. In due course the convention will be consulted by Indian courts also.³

There are, no doubt, certain areas where the discussion in the book can be usefully amplified. For example, the position of (so-called) "sole distributors" or "sole selling agents" needs to be analysed in the present day

2. Peter Schlechtriem, *Uniform Sales Law : The UN Convention on Contracts for the International Sale of Goods* (1986).

3. See, *Fothergill v. Monarch Airlines*, (1981) A.C. 251.

conditions. It has been correctly stated in the book that "there are cases in which the so-called agent is well known to be a purchaser who retails the goods".⁴ Many businessmen run away with the impression that a distributor is merely an agent, while, as a matter of law, the position may be different, particularly if the manufacturer supplied the goods to the distributor under no obligation to take back the goods not sold by the distributor. This situation, incidentally shows the crucial importance of statutory provisions relating to the passing of property in goods on sale.

Certain transactions are frequently entered into, in the commercial world and have important legal consequences for the man of commerce, as well as for businessmen. But many of them have a very faint legal image, and the notions of business persons about the legal aspects of such transactions are found to be hazy and obscure. Hypothecation is an apt instance of transactions belonging to this category. Every day, thousands of bankers enter into thousands of transactions, involving hypothecation of goods, but without fully understanding, or totally realising the legal significance of the transaction. Judicially, it has been said that hypothecation is an "extended idea of pledge, the creditor permitting the debtor to retain possession either on behalf of, or in trust for, himself (the creditor)."⁵

But this "extension of pledge" must be understood subject to the qualification mentioned above, namely, that transfer to a person having no notice may defeat the hypothecation. The creditor with a hypothecation has three rights, viz., to, (i) take possession; (ii) retain possession; and (iii) sell goods directly without the intervention of court for the purpose of recovering his dues. These three rights have also been mentioned in the Mysore case cited above. They are valuable rights, provided the practical limitations of the transaction as analysed above are kept in mind.

The reviewer would also like to make a suggestion regarding the *format* of the book. In the course of successive editions, some matter that was at that time) considered inappropriate for being added in the body of the book, came to be consigned to the footnotes. This has led to the footnotes becoming over-heavy.⁶ The reader who takes up such a book for reading, feels that he has been deprived of the joy of tasting the hot dish offered on the main page and that the dinner before him would not have one cold, if he had not been interrupted by such footnotes.

Non-legal intellectuals often regard footnotes as the "bane of legal writing". The complaint is not justified in the form in which it is made.

4. *Supra* note 1 at 60.

5. *Sree Yellamma Cotton etc. Mills, In re*, A.I.R. 1969 Mys. 280.

6. See, e.g., *supra* note 1 at 24, 42, 47, 69, 150, 307, etc.

With our hunger for "authority" for a proposition, footnotes are necessary. But efforts can certainly be made to keep them within reasonable length. Mulla's books are, in other respects, so elegant, that readers would be happy if that elegance is maintained at the level of perfection.

The book is very well printed and has an excellent get up, for which the publishers deserve thanks. The index is fairly elaborate and should serve its purpose well.

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