BOOK REVIEWS

MULLA ON THE SALE OF GOODS ACT AND THE INDIAN PARTNERSHIP ACT (9th ed. 1992). By H.S. Pathak. N.M. Tripathi, Pvt. Ltd., Bombay. pp. 240. Price Rs. 85.

THIS IS a section-wise commentary on the Sale of Goods Act 1930 and the Indian Partnership Act 1932. A remarkable feature of the book[1] is its brevity with accuracy. A fairly good commentary on the two Acts covers only 240 pages. Its clarity is also praise-worthy. While describing the applicable law in contracts involving foreign elements, it very succinctly yet clearly states :

> Firstly the parties are at liberty to subject the contract of sale to the law of the country of their choice. The choice may have been expressly stated by the parties or may be determined by the Courts from the terms of the contract and the other relevant circumstances surrounding the contract. Of the various circumstances, the two important presumptions made by Courts are in favour of applying the law of the place of making the contract (*lex loci contractu*) and the law of place where the contract is to be performed (*lex loci solutions*) or where the parties have inserted an arbitration clause into their agreement, the proper law of the contract is the law of the stipulated arbitration to govern their contract.
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> The transfer of property in goods under sales made in foreign countries is in general regulated by the law of the place where the goods are situated at the time of the sale, the disposition is binding everywhere irrespective of the mode of transfer.
>
> Questions about the admissibility of evidence, the enforceability of the contract by action and other matters of procedure belong in general to the *lex fori*' or the law of the place where the action is brought.
>
> In the absence of evidence to the contrary, the foreign law is presumed to be the same as the municipal law. If the foreign law is different, and the difference is relied on, the party relying upon the foreign law must prove it as a matter of fact.[2]

The book is essentially meant for students and is eminently suitable for that purpose. However, the reviewer feels that the book is not free from the common shortcomings of Indian books wherein they give a mixed discussion ot the Indian

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1. H.S. Pathak, *Mulla on the Sale of Goods Act and the Partnership Act* (9th ed. 1992).
2. *Id.* at 2.

and English cases, as if today after 46 years of independence also the English cases lay down the law for this country.

To discuss English cases is not objectionable, but Indian law based on Indian statutes and Indian cases should be stated without mixing it up with the law based on English cases. It is a fact that, to begin with, Indian law was based on the English law but that position does not hold good even now after 46 years of independence.

Just to illustrate, while explaining section 53 of the Indian Partnership Act on "right to restrain from use of firm name or firm property", the author says "certainly one partner may be restrained from using the firm name or the firm's property to do business for his own exclusive profit pending the liquidation of the partnership affairs."[3] For this statement, the authority cited is *Turner v. Major*.[4] Again just after this the author says, "after dissolution and liquidation of a firm there is no exclusive right to the use of the old name unless it has been so agreed; but it must not be used so as to expose a former partner to liability on the ground of holding out."[5] For this statement, the authority cited is *Burchel* v. *Wilde*.[6]

What is objected to is not the citation of English cases, but they should not be so cited as to show that they still constitute the law of this country. Here is the commentary on section 53 of the Indian Partnership Act, these two English cases alone have been shown as the sole authority.

As stated above in the beginning, the book definitely will be of great help to the students.

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3. *Id.* at 217.
4. (1882) 3 Giff. 442.
5. *Supra* note 1 at 217.
6. (1906), 1 Ch. 551.

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