

"ACCEPTANCE" UNDER SEC. 9 OF THE GOODS ACT, 1928.

*In re a Debtor*¹

This case is of importance in that it settles a difficulty as to the nature of an acceptance which obviates the necessity of a note or memorandum in writing for a contract for the sale of goods. Sec. 9 (I) of the Victorian Act (sec. 4 (I) of the English Sale of Goods Act), provides that a note or memorandum in writing of the contract is necessary to render it enforceable, unless "the buyer shall accept part of the goods and actually receive the same." Sec. 9 (3) (England Sec. 4 (3)) provides that "there is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not." The difficulty arises over sec. 40 of the Victorian Act (sec. 35, England) which states that a buyer shall be deemed to have accepted the goods when he intimates that he has accepted them, or when the goods have been delivered to him, he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without notifying the seller of his rejection of them. There has been a strong current of opinion that acceptance under sec. 40 (sec. 35, Eng.) is not an acceptance under sec. 9 (sec. 4), and that its importance lies simply in the fact that it prevents a buyer from subsequently rejecting goods which are not in accordance with the requirements of the contract, and leaves the buyer in the position of having to keep and pay for the goods, subject to his claim for damages arising out of the defective nature of the goods. This English decision establishes that this is not the case. In this case, goods to the value of £65 were sold by verbal contract of sale to a debtor. The goods were delivered to an employee of the debtor and remained on his premises for upwards of three weeks. The debtor did not himself act in relation to the goods. The Court (Farwell and Morton JJ.) held that this was an acceptance within sec. 35 of the English Act (sec. 40, Vic.) and that this constituted an acceptance within sec. 4 (sec. 9) rendering compliance with sec. 4 (3) (sec. 9 (3)) unnecessary. The purpose of sec. 4 (3) is to make contracts which comply with it unenforceable even though there has been no acceptance within sec. 35. The two forms of acceptance were not contradictory since certain acceptances outside sec. 35 might fall within sec. 4 (3). This point might well be illustrated by the case of *Abbot & Co. v. Wolsey*.² The two forms of acceptance might be regarded rather as complementary.

—ZELMAN COWEN.

1. (1939) 1 Ch. 225.
2. (1895) 2 Q.B. 97.

NATURAL LAW AND HUMAN LIBERTY.

Much has been said and written in recent years about the infringement of democratic rights and liberties. It is safe to say in the present trend of politics that such rights as we have will be increasingly restricted