"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

in the future even in the democracies themselves. In some countries, notably Italy and Germany and far more extensively in Russia and Turkey the rights of the individual have been swept away, so that the State alone remains with rights. The average citizen has nought but duties to the supreme entity, the State.

That even in democracies personal liberty is by no means secure has been shown in Lord Hewart's book, "The New Despotism," and the increasing control exercised by the Government and by public officials has been demonstrated during the last few years of international crisis. But going beyond the narrow confines of Lord Hewart's criticism, it is true to say that even in England Statute Law is supreme, there is no arbiter to say whether any enactment be good or bad, whether it constitutes an unjustifiable attack on personal liberty. The fact of the matter is that the statute must be obeyed as it stands and the Courts are bound to see that it is obeyed. In other words although we may deceive ourselves that our system is the most perfect, in fact it can become without essential change the tool of an authoritarian or even of a totalitarian State.

With the ever greater regimentation of life which is taking place in our own countries we must be clear on the fundamental principles of our system of law unless we wish the law to be used as the means of restricting democratic rights instead of upholding them.

We must have some standard by which we can judge positive law. Some reply: "Because the State has said it is so, you must obey." Such an answer fails to reach the heart of the problem as the source and limits of the State's authority are left unstated. Various answers to this problem have been made but in the main they fall into three divisions. First you have the Anarchists, who deny any authority at all to the State and who deny authority of every kind. It is obvious that such a system is sheer lunacy, as man must have government of some form or another. Secondly you have those such as Rousseau with his Social Contract and authority in the General Will. This in practice leads us to Hegelianism and can be used to justify Hitler and Stalin in their deification of the State and degradation of the individual. The third solution lies in the application of the theory of natural law. Natural law provides a standard by which we can sustain human personality. It does so because it is founded on the nature of man and takes into account his dignity as a human being. Law is in essence what directs man's path through life to his ultimate goal. It is then a command and as such is an act of reason because command presupposes movement of the will which has already been directed by the intellect. Hence laws imposed by rulers cannot be purely capricious but must be reasonable, directed to the goal of life, to be law at all. But law is not life, it is only a direction to the end of life and hence arise limitations to powers of legislation. Now the goal at which law aims is the common good of the state which is peace and the opportunity for all of its citizens—not merely a plutocratic few—to live a full human life.

Natural law is a declaration of universal principles from which men may proceed to the government of human activity. Positive law is the filling in of the interstices left by the principles of natural law and the

further development of those principles in accordance with human needs from time to time. No positive law can be out of harmony with natural law and still be a law, because if it does conflict with a principle of natural law then it is against reason. Natural law is simply the combination of man's natural inclinations guided by reason, the first principle of which is to do good and avoid evil. From this first principle follow the secondary precepts of natural law, which are expressed in the Ten Commandments and are of almost universal recognition. It is only as we get further away from the first principle that difficulty and mistake arise in its application.

We said before that the power of legislation is limited when we realise that law is the signpost along the road to the end of life. Hence if we examine man's relationship with the State in the light of these principles, we are led to certain conclusions. In the first place, the State which is the natural and reasonable result of man's social instincts and arises from man's need for government has the duty of seeing that he has every means at his disposal of preserving his own life and that of his family. Moreover, there is a positive obligation on it of assisting him if he is unable through circumstances over which he has no control to do so himself, e.g., in the case of a depression and unemployment.

The limits of State authority arise logically in such a system as this. Men are no longer doubtful as to their position but have a reasonable standard by which to judge the actions of the State. Man is not considered as an instrument for the glorification of the State, but the State is seen in its true perspective as the means of enabling man to develop his personality, moral, physical and intellectual and as the safeguard of the common good of all its members. The importance of such principles in helping to solve the social upheavals of our day is obvious. It is useful to remember that natural law was used in the past as the standard by which the limits of governmental power were judged. It was Bracton in 13th Century England who said that "The King is under God and the Law." Blackstone, centuries later, was to reaffirm it. The founders of the American constitution also appreciated its value, as witness, James Wilson, one of the leading figures in its framing. "The law of nature is immutable. It is universal and having its foundation in the constitution and state of man has an essential fitness for all mankind and binds them without distinction." The American constitution largely through Wilson's influence is a genuine attempt to frame positive law in accordance with natural law with specific guarantee of the rights of the individual. As Chief Justice Marshall said in *Marbury v. Madison,* "The powers of the legislature are defined and limited and that those limits may not be forgotten or mistaken, the constitution is written."

Thus we have an example near to our own times of an attempt to translate the principles of the natural law into the practical every-day life of a nation.

The alternatives are clear. Either the State is supreme and unchallengeable in its every act and we must all be regimented at the whim of

the majority or minority in power at any particular time or we must adopt some such standard as that of natural law to enable man to progress in consonance with his character. We have the choice of freedom or slavery. Which is it to be?

—JOHN F. MOLONEY.