

and the *Annual Law Review* have hitherto achieved, since it will appear more than once a year. Removing from our minds however the prejudice which this high degree of fertility raises, the General Editor and his Editorial Committee and Boards (two in number) are to be congratulated on the production of the first number of their review containing as it does a wealth of interesting material in the form of articles, comment, notes on legislation and case notes. Major articles are "Equity is not to be presumed to be past the age of Child-Bearing" by Sir Raymond Evershed, "Changing the Constitution" by Sir John Latham and "The Reorganization of the Judiciary in New Jersey" by Willard G. Woelper. The page size used would, however, possibly be more suitable for a telephone book.

P. A. W.

The Law Relating to Building and Engineering Contracts, by W. T. Creswell, K.C., fifth edition by T. R. D. Davies, B.Sc. of Gray's Inn, Barrister-at-Law. (London, Sir Isaac Pitman & Sons, Ltd.), pp. xxi, 442. Australian price £2 5s.

This compact handbook on the law relating to building and engineering contracts, which was written primarily as a practical guide to architects, building contractors, and others interested in building and construction work, will be found useful also by lawyers. The book gives a concise and practical introduction into the many legal questions in this field, without aiming at competing with the large treatises on the law of building contracts. The fact that this work now appears in its fifth edition is proof of its popularity which, in the reviewer's opinion, is fully justified.

J. LEYSER

Bills of Exchange in Australia, by B. B. Riley, M.A. (Oxon), Barrister-at-Law (The Law Book Co. of Australasia Pty. Ltd., 1953), pp. xx, 303. Price £2 10s.

This useful volume is intended to take the place of Russell and Edwards on *Bills of Exchange in Australia*, the last edition of which was published by the Law Book Co. in 1928.

The present work follows the classic form of annotation of the various sections of the relevant legislation. But it has a valuable introductory section of some twenty pages or so, dealing in general terms with the Assignment of Choses in Action, the history and development of the concept of negotiability and the various codifications of the law relating to Bills of Exchange in England and Australia. In such a brief introduction, it is obviously impossible to deal with problems in any detail. I was impressed, for example, by the skilful manner in which the author neatly side-steps the one really difficult question in assignment by saying "as between the assignor and assignee it seems that consideration is necessary at

any rate to a mere agreement to assign as distinct from a completed assignment". For that he cites *In re McArdle*,¹ which, of course, was quite inconclusive on this point. It seems strange that there are no Australian authorities on this point, especially in view of the uncertainties left unresolved in *Anning v. Anning*.²

There is a certain amount of repetition in the discussion of the concept of negotiability but the conclusion is clear (pp. 11-12) and it certainly is an advantage to have this discussion set out in one place rather than, as often happens, scattered throughout the book.

This remains essentially a legal practitioner's work of reference. There is little that is new or original and it follows fairly closely the lines of its predecessor. It has been brought up to date and seems to have included most of the modern authorities on the topic, which is, after all, its chief purpose.

There are a few omissions which, it must be confessed, were brought to notice mainly by reading at the same time Chorley and Smart's *Leading Cases on the Law of Banking*. (In fairness to Mr. Riley, it should be pointed out that some of these authorities do not appear in the legal reports but only in English periodicals of limited circulation.) Examples include *Smith & Baldwin v. Barclays Bank Ltd.* (an example of the protection afforded a collecting banker by s. 82 of the English Act, s. 88 (1) of the Australian Act), reported in (1944) 65 *Journal of the Institute of Bankers* 171, and discussed in Chorley and Smart at p. 114; *Place & Sons Ltd. v. Turner* (1951) *The Times* 7 Feb. (no duty owed by drawer to drawee or to the general public to avoid such carelessness in his business—including the drawing of cheques—as may injure another financially); *Bagley v. Winsome* [1952] 2 Q.B. 236 (effect of garnishee order). This last case prompts the further comment that the index is not as helpful as it might be. "Garnishee" does not appear as a separate head, yet it is discussed on p. 246 and references are given in a footnote to several books dealing with the topic. Nor is there any separate title relating to *Joint* parties, though there is a reference to "Indorsee, joint", and "Acceptor, joint". Again, someone looking for a discussion of the "*Lex fori*", "*Lex loci solutionis*" etc., would get no help from the index, though these are dealt with at pp. 233 *et seq.*

It may seem a paradox, but to the people who are mainly concerned with the handling of negotiable instruments, namely bank officers, a large part of this work would be of "academic" interest only. In practice most Bills of Exchange handled by Australian banks generally do not circulate among traders or financiers but are simply lodged by the drawer with his own banker for collection or negotiation.

¹ [1951] Ch. 669.

² (1907) 4 C.L.R. 1049.

The following detailed comments are made for the consideration of the author.

- (i) p. 38 (f). In discussing the meaning of "a sum certain in money" it is stated that an order to pay a specified sum "plus all bank charges" would not be an order to pay a sum certain within s. 8 (i). Admittedly, the decisions in *Wildey's case*³ and *Rosenhain's case*⁴ support this statement. However, it is still not uncommon in practice to find a Bill so clauséd, or else with the addition "plus interest from date hereof until approximate date of arrival of funds in London". In such cases, the presenting bank would calculate these amounts before presenting the Bill to the drawee for acceptance. The acceptance therefore would relate to a "certain sum". In view of the cases cited it would seem that even so, the document would not be a Bill of Exchange. Is this another example of the way in which the law is out of touch with current practice? Some such fear of the legal position may be the reason why banks are sometimes authorized to waive charges should the drawee refuse to pay them.
- (ii) pp. 43-4. "A cheque drawn in favour of the drawee bank (if not by way of payment) is a direction to the bank to hold the amount for which it is drawn and to await further instructions as to its disposal." What would be the position if the bank can only hold such amount at the risk of dishonouring other cheques, etc. of that customer which may be presented prior to such instructions being received?
- (iii) p. 139. Third last paragraph: "As to posting it, see para (e) below." But there is no further mention of para (e) (presentment by post), which does cause some difficulties in practice.
- (iv) p. 254. Section 86 (protection to paying banker where cheque is crossed) is said only to apply "to a case where the true owner is somebody other than the drawer". On p. 252, it has already been stated that if the drawer posts the cheque to the payee without the latter's request express or implied, the drawer remains the true owner until delivery to the payee. Does this mean that in such a case a paying bank, otherwise satisfying the terms of s. 86, would be deprived of its protection if the cheque was lost or stolen in transit?
- (v) It may be a little chauvinistic to assume that everyone will recognize "S.R." immediately as referring to the New South Wales Reports, especially as no indication of this is given in the list of abbreviations.
- (vi) It seems to this reviewer at least that it would have been better to retain the practice of including marginal references to cor-

³ *Standard Bank of Canada v. Wildey* (1919) 19 S.R. (N.S.W.) 384.

⁴ *Rosenhain v. Commonwealth Bank of Australia* (1922) 31 C.L.R. 46.

responding sections of the English Act. This certainly facilitates reading of English authorities where several sections may be referred to.

It is unfortunate that a twelfth edition of Chalmers' *Bills of Exchange* appeared in 1952, whereas the references in the present volume (dated 1953) are to the eleventh edition. However, the publishers have gone several steps better and on the dust-jacket refer to the *twentieth* edition of Chalmers as being now available!⁵

F. P. DONOVAN.

⁵ I am indebted to Mr. Crowe of the Commonwealth Bank for a valuable discussion of this work, though it must be emphasized that any views expressed were personal only and in no way reflected official practice or policy of the Commonwealth Bank.

BOOKS ALSO RECEIVED (To be reviewed in next issue)

The Law of Municipal Contracts with Annotated Model Forms, by Charles S. Rhyne (National Institute of Municipal Law Offices, 1952), pp. 192. Price U.S. \$ 7.50.

The Law of Agency, by Raphael Powell (Sir Isaac Pitman & Sons Ltd., 1952), pp. xlv; 352. Australian price £3.

The Principles of Agency, by H. C. Hanbury (Stevens & Sons Limited, London, 1952), pp. xviii; 237. Australian price £1 14s. 6d.

All communications including the submission of books for review should be addressed to the Senior Editor, the Law Schol, University of Melbourne, Carlton, N.3. He cannot undertake the return or safe custody of MSS sent to him without previous communication.

The next issue of this Journal will complete the present volume; it will include a comprehensive index to all four numbers.