tioners, law teachers and students and which will, one hopes, appear in many more editions.

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Bailment, by N. E. Palmer, Sydney, The Law Book Company Ltd., 1979 cvi + 1056 pp. $57.50.

This book belongs to a genre which was once very common and is now becoming increasingly rare. Its rarity is evidenced by the tendency of publishers to devote most of their efforts to producing casebooks of doubtful value, and to producing ephemeral loose-leaf publications — "services" for this or that, commentaries on legislation which is being constantly amended. The contrast with a lawyer's library of a hundred or even twenty years ago is marked. How has this come about? Partly because the law is thought to have become much more legislation-based; the fundamental doctrines and institutions of the common law are thought to be becoming interstitial and ceasing to be central. As a result, it is said, there is a declining market for work expounding the common law, and a rising one for other works. Taxation reasons play a part as well. But there are two other causes. One is that the role of legal practitioners as authors is for some reason declining; those capable of valuable legal writing do not share the need of their predecessors to supplement exiguous incomes by Grub Street activity, and a wish to make a mark on the literature of the law for non-economic reasons seems relatively less common. The other cause stems from the fact that the bulk of legal scholarly production comes from academic pens, and those who wield them are showing an increasing want of interest in common law and private law questions, preferring to examine one aspect or other of public, usually statute-based, law. And few would be found with the skill, determination and stamina to perform the task which Mr. Palmer has performed in this lengthly and valuable book.

Yet the decline in books which expound and analyze the central doctrines of the common law does not mean they are any less useful than formerly. Indeed, as the law increasingly tends to lose central controlling influences — as an overproduction of reports of the doings of newly swollen judiciaries is added to the disintegrating effect of masses of new legislation — the need will increase for works attempt-

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ing to remind lawyers of fundamental principles which are ultimate regulators of problems in a way statute law can hardly ever be.

Mr. Palmer formerly taught at the University of Tasmania and now teaches at Manchester. He states three aims (p. vii): "to provide a guide for practitioners upon the problems of bailment that commonly arise in practice; to provide a source from which students may discover more about a legal relationship normally neglected by other writers; and to place the bailment relation within its proper perspective in the modern sphere of obligations". He regards the third as the most significant; but the other two are achieved with equal success. Bailment as a legal category has, despite Paton's book, fallen into oblivion, partly because of trends in legal education, and partly because of its inherently anomalous character in minds which divide the universe of civil liability into contract or tort. The difficulties of writing about it are very great since the compilers of digests, indexes and encyclopaedias commonly do not deal with it as a separate category and hide it under other, often improbable, headings. Mr. Palmer has overcome this difficulty. He has cited decisions from the entire Commonwealth, very extensively from Australia, and liberally from the United States of America. He has mastered the old literature and caselaw on the subject as well as the extensive periodical literature, particularly in modern times from North America, and the recent legislation affecting bailment, Australian as well as English. One who is to write convincingly about bailment must be the master of many other legal doctrines. Mr. Palmer meets that condition.

The book covers over 1,000 pages and is divided into 26 chapters. In Chapter 1 he analyzes the nature and elements of bailment — what can be the subject of the relationship, how it is created and enforced, and how it is terminated. He reveals the independence of bailment from delivery, contract, and consent. He demonstrates that actions in bailment are *sui generis* even though actions in tort and contract often overlap with them and produce the same result.

In Chapter 2 he analyzes the possible classifications of bailments, and the distinction between bailment and other institutions. In Chapter 3 he discusses the remedies of the bailor. A clear analysis of the *Penfolds Wines Case*[1] is provided. Appendix I notes the revolutionary effects of the English Torts (Interference with Goods) Act 1977 in this and other areas. On tracing, reference might have been made to the full analysis in *Jacobs*. Mr. Palmer notes at p. 155 the profound effects which the *Romalpa Case*[2] is likely to have on contracts for sale, though his implied criticism of it is perhaps too muted.

Chapter 4 deals with the remedies of the bailee, and contains a good analysis of the extent to which a bailor can recover to the full

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[1] *Penfolds Wines Pty. Ltd.* v. *Elliott* (1946) 74 C.L.R. 204.
[2] [1976] 2 All E.R. 552.

extent of injury to the chattel, including Warren's vigorous attack on *The Winkfield*.[3] At pp. 193-4 there is discussion of the bailee's right to insure the full value of the goods, and there ought to be a reference to and discussion of the High Court's decision in *British Traders' Insurance Co. Ltd.* v. *Monson*.[4]

Chapter 5 analyzes in detail and authoritatively the difference between a bailment of a chattel and a mere permission to use it. Chapter 6 discusses the extent to which knowledge is essential to possession. Chapter 7 discusses the rule that where a servant has custody of a master's goods, possession is in the master; it also discusses exceptions to the rule. There is special discussion of problems arising when an employee is lent with machinery, and when a contract of carriage is made.

Chapter 8 analyzes the distinction between gratuitous bailments and bailments for reward. Chapter 9 discusses gratuitous safekeeping. Chapter 10 discusses the loan of a chattel on which gratuitous work is to be performed. Chapter 11 discusses the gratuitous loan of a chattel for the borrower's benefit; Mr. Palmer opines at p. 363 that the conditions and warranties implied by ss. 69-72 of the Trade Practices Act 1974 (Cth.) will not apply to such relationships, which appears sound. Chapter 12 discusses involuntary bailment, and contains the best account known to the reviewer of the vexed issue of what duty an involuntary bailee is under. The English and Australian uncollected goods legislation is carefully reviewed; so is the unsolicited goods legislation, though Mr. Palmer finds it no easier than other writers to return a confident answer to the question "What does 'wilful and unlawful act' in s. 65 (1) of the Trade Practices Act 1974 (Cth.) mean?".

Chapter 13 discusses the safekeeping of goods for reward; the confusion surrounding the issue of bailees' liens is well noted (pp. 493-9). Chapter 14 discusses contracts for services which are coupled with a bailment of the article on which the services are to be performed. The important effects of the Trade Practices Act 1974 (Cth.) s. 74, are discussed at pp. 527-31 and 537-41. At p. 547 n. 10, where the question of liens is discussed, the words "the Court of Appeal" should be substituted for "Megarry J" — the former reversed the latter's decision in reaching a decision based on the proposition stated.

Chapter 15 discusses carriage of goods by road, Chapter 16 by sea, Chapter 17 by air, and Chapter 18 by rail. Particualr attention is paid to the extensive modification of the common law by statute in England and Australia and by treaty.

Chapter 19 discusses the hire of chattels and notes the effects of the Trade Practices Act 1974 (Cth.), ss. 69 (1) (b) and 71 (2). (It

[3] [1902] P. 42.
[4] (1964) 111 C.L.R. 86.

may be noted that though the text was completed before enactment of the 1977 amendments to the Act, Appendix II discusses those which are relevant, mainly the new definition of "consumer".)

Chapter 20 discusses "Extended or Constructive Bailments" — sub-bailments and the like. Chapter 21 discusses bailment by attornment. Chapter 22 discusses bailment by finding and traverses clearly and thoughtfully one of the better-worn paths of the subject.

Chapter 23 discusses innkeepers, another subject which has received extensive but partial legislative modification. Chapter 24 considers boarding-house keepers.

Chapter 25 offers a lengthy discussion of exclusion clauses. At p. 941 there is commendation for recent Australian courts, in contrast to English, for preserving "an enviable integrity of approach".

Chapter 26 discusses the extent to which a bailment affects third persons.

Mr. Palmer recognizes that the fundamental principles of his subject can change, usually slowly, but at some points quite suddenly and recently. However, Mr. Palmer makes no aspirations towards modernity; his book is refreshingly free of vogue words and strainings after "originality". That is one source of what will be found to be its continuing value.

Mr. Palmer writes clearly and with occasional wit. He has been able — and it is a task which is not easy and not often achieved — to maintain grasp over his vast subject and submit it to organization. He avoids excessive repetition. He comes to the point directly on most occasions.

Proof-reading has been carefully carried out. The name of Sholl, J. is generally misspelt (e.g., pp. 41 and 467); there are fewer misprints than normal (e.g., pp. 131 and 965). The type is clearly set and the book is stoutly bound.

The labour that goes into a book of this scale can only be appreciated by one who has undertaken it. The skill required for the successful completion of a book on this subject can only be grasped by one who has read it. It is not only because in modern conditions works of this kind have so few rivals that the publication of this one stands as a major legal event of 1979. It may well become one of the principal contributions to legal literature of its generation. Its author deserves appropriate credit. So too does its publisher. If few authors are now tempted to write these works, fewer law publishers now encourage or facilitate the production of them; yet these books were once the pillars of our law, and conditions have not changed so much as to make their absence anything but an impoverishment of our system and a source of ignorance.

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