

A T R E A T I S E

ON THE LAW OF

SALES OF PERSONAL PROPERTY,

WITH

ILLUSTRATIONS FROM THE FOREIGN LAW.

BY

WILLIAM W. STORY.

SECOND EDITION.

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TO

CHARLES SUMNER, Esq.,

THIS TREATISE IS INSCRIBED BY HIS FRIEND,

THE AUTHOR.

ADVERTISEMENT TO THE SECOND EDITION.

IN preparing a Second Edition of the present treatise, the whole work has been thoroughly revised, and material additions have been made. It is believed that all the important cases adjudged since the publication of the previous Edition have been cited in the notes, while whatever new development or modification of principle has appeared, will be found also embodied in the text. The continental jurisprudence has been diligently examined and incorporated into its pages by way of illustration. The favor with which this work has been received by the profession has prompted the author to use his best endeavors to render it more complete and worthy of their approval, and it is earnestly hoped, that in its present form, its value as well as its bulk has been increased.

W. W. STORY.

BOSTON, 1853.

## P R E F A C E .

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SIR EDWARD COKE, in the preface to the 5th part of his Reports, says: "As naturalists say that there is no kind of fowl of the wood, or of the plain, that doth not bring somewhat to the building of the Eagle's nest,—some, cinnamon, or things of price, some, juniper, or things of lesser value; so ought every man, according to his power, place, and capacity, to bring something to the adorning of our great Eagle's nest, our own dear country;" and these presents I have brought to that great Eagle's nest, the Law.

There is probably no portion of law, which is subject to more constant changes and additions, than that relating to Sales of Personal Property. The continual increase of commerce, not only gives birth to new questions, but materially modifies established doctrines. The doctrine of implied warranty, for instance, which is one main branch of the Law of Sales, is almost entirely the growth of very late years, and can scarcely even now be said to be settled. No treatise, therefore, which does not embody the result of the late decisions, can be at all adequate to the solution of many embar-

rassing questions relating to Sales, which are daily arising; and inasmuch as the principal treatises on this subject, which pretend to any fulness, were published at a comparatively early date, and do not contain an exposition of the law relating thereto in its present state, a work embodying the more modern doctrines and rules would seem to be needed for this, if for no other reason.

The principal English treatises on Sales of Personal Property, are those of Mr. Brown, Mr. Ross, Mr. Long, and Mr. Bell, — the first being a treatise of much merit, upon the Scottish law, and the last being a small and posthumous work by Mr. Professor Bell, containing an able sketch or outline of the Scottish law, but being merely an outline. The work of Mr. Ross was printed in 1811, and its incompleteness was the reason stated by Mr. Long for the work on the same subject, published by the latter in 1821. Mr. Long's work, however, although it has been greatly enlarged and improved by the labors of Mr. Rand, is very inaccurate and incomplete, and is, to say the least, no improvement on the work of Mr. Ross. Mr. Rand, the learned editor, in his preface to his edition of Mr. Long's work, makes much complaint of its deficiencies, and says: "By reason of the want of proper divisions of the subject in the original treatise, and of a proper classification and arrangement of the matters contained under each head, defects which could not now be remedied, it would be much better to write a new treatise, than to endeavor to supply the deficiencies of the original work." In America, no work has been written on this subject, if

we except the very able outline by Mr. Chancellor Kent, contained in his Commentaries on American Law. A full and new treatise, which shall contain an exposition of the whole body of law relating to Sales, as it now exists in America and England, and which shall elucidate and systematize the various conflicting authorities, and establish the rules of this branch of law upon the basis of principle, seems, therefore, to be greatly needed, both for the student and the practitioner. Towards such an end all my efforts have been directed in the present work, but I have not the presumption to suppose, that I have been so fortunate as to accomplish it.

Other reasons have conspired to induce the preparation of the present volume. In preparing a condensed statement of the law relating to Sales of Personal Property for a previous treatise on the law of Contracts not under Seal, I sought in vain for some treatise, which should explain the apparent confusion and contradiction of cases, which so continually embarrass the student in this branch of the law; and the doubts and difficulties, with which I was beset at every step, induced me to undertake the present task, in the hope that I might be able, in some measure, to clear up the intricacies of this subject, and reduce it to some system. One great obscurity, for instance, in which the subject is involved, is to be found in a careless use, both in the treatises and in the cases, of the term "delivery," to mean one thing, when, in fact, it means several entirely different things. And as the answer to the question, "What constitutes a delivery?" depends upon what is

meant by delivery in the particular case, and cannot be given without reference to the position of the parties, and to the object of the question, this indiscriminate use of the term must necessarily tend greatly to confuse the student as to the legal liabilities of the parties. No labor has been spared, in the present work, to clear up the obscurity on this subject; and it is hoped, that the rules in respect to delivery, herein laid down, will afford the clue to the labyrinth of apparently contradictory cases.

In the course of this volume continued reference is made to the Foreign Law, particularly to that of France, which is the most important expression of the law of Continental Europe, and to the Scottish Law which is a compound of the Roman and the Common Law. The Code, Institutes, and Digest, as well as the works of Pothier, Duranton, and Duvergier, have been studiously consulted, and to them, and the admirable treatises of Brown, Bell, and Kent, I have been much indebted. Wherever the Common Law was found to be deficient, or unfounded in principle, or a dead form, — while the Foreign Law was the reverse, I have not scrupled to give preference to the latter, in the feeling, that Law, the life of which is Right, should be above the prejudice of national boundary, and should reject its own unjust offspring in favor of the foreign children of Justice. Nor have I hesitated to challenge all rules, which seemed devoid of principle, and to use my best argument against them. Perhaps it would seem, to some persons, more becoming, had I omitted such argument; but believing that it is the duty of



every legal writer to endeavor, in so far as in him is, to remove from the law every reproach and blemish, and to establish it upon the eternal basis of Justice and Right, I have not felt at liberty to omit my testimony against whatever has seemed to be merely arbitrary and unjust. For, as was well said by Lord Bacon, the debt a man owes to his profession is best performed, if he "be able to visit and strengthen the root and foundation of the science itself; thereby not only gracing it in reputation and dignity, but also amplifying it in profession and substance." And I also, a humble follower after that great mind, have come to the study of the laws "with a mind and a desire, that the same laws should be better for my industry."

He who, when this work was begun, was at my side to help and encourage me, is now no longer among the living. His eyes have never beheld even a written line, and one of my greatest rewards is denied me. After his dear countenance was hidden from me, and his spirit had passed beyond this earthly horizon, like the full-orbed sun at the close of a long serene day, only the twilight of memory was left in which to finish my task. Then, alone, without his cheering presence to enlighten me, but yet in obedience to his living wishes, I have finished to his memory what I began for his delight.

W. W. STORY.

Boston, February 12, 1847.

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