

# Cases on Restitution (Book Review)

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understand it. The definition says nothing about an intention to exchange performances as to a portion of the goods contracted for. It is a price term rather than a performance term. Consider its application to the cases where there has been a partial destruction of specific goods before the title passes and the buyer elects to take title to the remaining goods.<sup>8</sup>

Just as in the preceding paragraph *re* divisible contracts I have probably failed to make my point clear by trying to compress too much into too little, the author here and there makes brief and rather dogmatic statements that require more elucidation to be correctly understood. Speaking of cash sales, for example, he says that although in general the rule is that if the goods are specific and nothing remains to be done by the seller, the presumption is that title passes at the time of the bargain, but "the parties show a different intention where the contract requires the goods to be paid for cash on delivery."<sup>9</sup> But might it not be a sale with a vendor's lien? If *nothing remains to be done by the seller* I think it would and should be so construed. It is indeed difficult to put into definition the conception of a technical cash sale. If all the duties on both sides are to be closed out simultaneously with the bargain, as in an over-the-counter bargain accompanied by delivery of the goods and payment of the price, we have a cash sale. Again, if payment by the buyer is conditioned on simultaneous completion of some positive duty by the seller and vice versa, *e.g.*, delivery by the seller to the buyer's place of business "cash on delivery", we have a cash sale.<sup>10</sup> But if the buyer is to take delivery at some time subsequent to the bargain and nothing remains to be done by the seller but to let the buyer take possession when he comes for the goods then the phrase "cash on delivery" imports that the seller does not propose to give up possession until he is paid. On principle it should be presumed that title passes.<sup>11</sup>

But enough of grandstand quarterbacking. Professor Whitney has steadily enlarged and improved his book through three editions. The comprehensive coverage of New York cases, of the Sales Act, of the Conditional Sales Act, of the Bulk Sales Act and of the Trust Receipts Act makes this edition exceptionally useful for New York lawyers. Lawyers and students everywhere will find it to be an excellent summary of the law, furnishing a wealth of illustrative cases.

GEORGE W. BACON.\*

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CASES ON RESTITUTION. By Edward S. Thurston. St. Paul: West Publishing Co., 1940, pp. xxviii, 964.

Restitution is an act by which exact reparation so far as possible is made for an injury which has been done to another. This is the definition of restitution considered from a moral standpoint.

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<sup>8</sup> N. Y. PERS. PROP. LAW §§ 88, 89.

<sup>9</sup> P. 41.

<sup>10</sup> Levin v. Smith, 1 Denio 571 (N. Y. 1845).

<sup>11</sup> The case which is regarded as laying the foundation for the rule that title is presumed to pass if the goods are specific and in a deliverable state at the time of the bargain and nothing remains to be done by the seller did so hold. Tarling v. Baxter, King's Bench (1827) 6 Barn. & C. 360.

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According to the moral law, if one person injures another, he offends against justice. This he may do, if he keeps what belongs to another, or damages the person, the property or the reputation of another. Justice demands that the damage be repaired. Hence, the wrongdoer has an obligation, binding in conscience, to make reparation for the injury which he has done; the person wronged has a right to have the damage repaired.

Our civil tribunals recognize and enforce a legal obligation to make restitution. When equity decrees that one person is entitled to a specific thing, it is at once adjudging that one person has a right to that thing and that another person has a duty to restore that thing. When, at law, a judgment is rendered for a sum of money, it is at once adjudged that one person has a right to a sum of money, and that another person has a duty to pay that sum of money. Both obligations are restitutionary in their nature. Much of the substantive law is devoted to a consideration of the circumstances under which this right and duty coexist. Demonstrably, therefore, a general, comprehensive consideration of the principle of restitution in all its ramifications would invade many of the courses usually included in a law school curriculum.

The author of this excellent collection of cases does not consider all those factual situations wherein the principle of restitution, as broadly defined, has specific application. Manifestly, this would exceed the spatial possibilities of a single volume. He carefully limits, lays out and plots his field. He judiciously includes, and he prudently excludes. To use his own language, he treats of "the legal principle of restitution whether enforced by an action at law or by a suit in equity; that is to say, those restitutionary rights which are enforceable either by the common law counts in the action of general assumpsit, under the head of quasi contract; or by a bill in equity. The latter category includes the equitable doctrines as to the rescission of conveyances, contracts and other documents for fraud, mistake or duress, and a substantial part of the doctrines as to the reformation of such writings." He does not include certain restitutionary remedies such as those enforced by the common law actions of ejectment, replevin, detinue, and trover, nor by the equitable device of constructive trust.

Even as so limited, this volume covers a broad field. The table of contents, lengthy and detailed as it is, gives but an inkling of the manifold, varied factual situations wherein the legal principle of restitution has application. If this wealth of material were mismanaged or improperly assembled, the book would be a jumble. This the author skilfully avoids. By appropriate classification of both cases and materials and by ingenious arrangement, he has produced a work which would be difficult to surpass in clarity, consistency and continuity.

Close scrutiny of each chapter, separately and in detail, discloses how carefully the author adheres to the basic idea incorporated in each chapter heading. As a result each chapter, with all its branchings and intricacies, produces a single integrated impression.

The chapters are arranged in a sequence well adapted to a proper approach and a systematic and effective development of the whole subject.

The cases are selected from many jurisdictions. But, obviously this is not done for the purpose of giving the book a national market, but rather because of the intrinsic merits of these cases. Most of them are well written; many of

them possess the desirable attribute of brevity; they are richly suggestive rather than exhaustive.

To this reviewer, the author of this volume seems to have been ever aware of student and classroom requirements. It possesses those qualities which are calculated to make an effective vehicle of instruction. It is a notable contribution in this field of the law.

GEORGE F. KEENAN.\*

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CASES ON DAMAGES. By Judson A. Crane. St. Paul: West Publishing Co., 1940, pp. xx, 521.

Once more this reviewer is asked to comment on the good book of an excellent workman with whose views of law, the approach and attitude toward it, the technique of it, and the methods of teaching it, he is in general accord. Disagreements about details, however, can involve matters of considerable importance, for it is upon his choice of the details that the efficiency of every teacher depends. However, where there is agreement about essentials, even serious disagreement about details can mean only that the critic of the workbook of a fellow teacher would feel himself circumscribed in his use of the book by the editor's choices of content, content-form and layout.

Mr. Crane's workbook in *Damages* would better serve your reviewer and those—very few, perhaps—who think as he does if there were more stimulation by way of materials permitting an approach through lessons of history and particularly the history of the law of damages under the writs, which, for practical purposes, we take as an historical starting point. *Trustees of Dartmouth College v. International Paper Co.*,<sup>1</sup> Mr. Crane's first case, would, in a book to please this reviewer more, be followed by others which would aid in an understanding of modern principles of damages on the basis of historical descent from the days and the purposes of the writs. At various places throughout the book the chosen cases make this approach possible,<sup>2</sup> but your reviewer likes more of the stimuli to historical thinking to appear earlier in a volume in order that it may operate upon the student mind throughout. What is done with history's influence, of course, depends upon the resourcefulness of the teacher and hence, so far as the historical process is concerned, this reviewer refrains from criticism on the basis of the editor's failure to include historical materials other than cases.

As for the other processes, the analytic is well served by the sufficiency of the number of cases;<sup>3</sup> the others are left to the teacher who uses the book.

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<sup>1</sup> 132 F. 92 (N. H. 1904).

<sup>2</sup> *Ashby v. White*, 2 Ld. Raym. 938, 92 Eng. Rep. 126 (Q. B. 1703), the first case in Mr. Crane's Chapter 2, and *Forsyth v. Wells*, 41 Pa. 291, 80 Am. Dec. 617 (1862), to mention but two.

<sup>3</sup> There are 130 cases in the book. The editor has not seen fit to number them, so that the figure must be arrived at by counting in the Table of Cases the items which are stated as being case opinions.