A DIGEST OF THE LAW OF PARTNERSHIP: INCORPORATING THE PARTNERSHIP ACT, 1890

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PARTNERSHIP ACT, 1890.

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PREFACE.

THE form of this work is no longer a matter of private choice as to the greater part of it, and therefore no longer needs an apologetic introduction. It will suffice to explain how the book has become an edition of an Act of Parliament, and could become so while preserving most of its original substance. In 1877, having been asked to write a concise work on Partnership, I determined to follow Mr. Justice Stephen's example in his "Digest of the Law of Evidence" (an example which then stood alone), and to frame the book on the pattern of the Anglo-Indian Codes. It then seemed to me possible that Parliament might be induced to adopt Macaulay's invention of adding authoritative illustrations to the enacting text of a code; I call it Macaulay's, for I have not found in earlier writers, including Bentham, more than slight rudiments of the idea, and its first distinct appearance was certainly in the draft of the Indian Penal Code. But at all events this method of statement enables the private author of a Digest in codified form to exhibit in the clearest and shortest way the substance of the authorities on

which his text is founded. When such a Digest is used as the groundwork of a Bill, and the Bill finally becomes an Act of Parliament, as has happened with Judge Chalmers' Digest of the Law of Bills of Exchange, and now with the present work, the decisions exhibited by way of illustration are no longer the only part of the work having authority, but they remain authoritative so far as they are consistent with the terms of the Act, and a summary view of them will often be convenient, sometimes almost necessary, for the understanding of the law as now declared by the Legislature. Unless the law has been purposely altered, which in a codifying Act is a rare exception, the decisions are still the material from which the rule of law has been generalized. The rule has acquired a fixed and authoritative form, but the principle is the same. It is a minor question, in a country where the law is uniform, and its administration is in the hands of trained lawyers, whether it be desirable for the Legislature to undertake the selection and statement of illustrations to a Code. Perhaps it is a thing best left to private enterprise; the rather, in this country, that the conditions of our legislative procedure make Parliament about the least fitted of European legislative bodies for such a task. Meanwhile experience has shown the convenience of Macaulay's method for the statement of a well settled branch of law by way of private exposition, and has also shown that it may prepare the way for codification.

Judge Chalmers' work, which was first published not long after this, was transformed into a Code (the Bills of Exchange Act) in 1882, and there is every reason to hope that his Digest of the Sale of Goods will lead to a like result in the next few years. In this case, indeed, a codifying Bill was prepared by Judge Chalmers, and introduced by Lord Herschell in the House of Lords, before the materials were published in the shape of a Digest.

The history of the Partnership Act may be very briefly told. In 1879 I drafted a Bill, intended, first, to codify the general law of partnership; secondly, to authorize and regulate the formation of private partnerships with limited liability, corresponding to the *société en commandite* of Continental law; and, thirdly, to establish universal and compulsory registration of firms. The two latter objects were those which my clients at that time were most bent on. Subsequent experience has shown, I think, that there is no real demand or need for either innovation. The registration part was dropped in 1880 as a condition of the general approval of the Board of Trade. In 1882 the Bill made so much way as to be reported by a Select Committee, which, however, declined to proceed with the limited partnership scheme. After being again introduced several times without reaching the stage of effectual debate, the Bill was, in 1888 and 1889, further considered by the Board of Trade and the Attorney-

General with a view to its adoption by Ministers. In the present year it was introduced by the Lord Chancellor in the House of Lords, and there revised by a Select Committee, which made various changes in the arrangement of the sections and a certain number of amendments. The Bill passed through the House of Commons with a few further amendments, due partly to the Attorney-General and partly to Sir Horace Davey, and became law towards the end of the session. The Act will come into operation on January 1, 1891. Perhaps I ought to explain that I have had nothing to do with the preparation of the Bill for several years; but I believe the only important alterations are those made in Committee this year, chiefly by the House of Lords.

It may be doubted whether the Act will add much to the knowledge of the law possessed by practising members of the Chancery Bar, but even to them it may save time and trouble. Some familiar principles for which there was but little reported authority are now placed beyond even formal doubt, and some doubtful points are settled according to modern usage and convenience. Possibly members of the Common Law Bar, and probably students entering on the subject, will be thankful for the Act; and it ought at any rate to make the substance and reasons of the law more comprehensible to men of business who are not lawyers. It is not to be supposed that

difficult cases will be abolished, or to any great extent made less difficult, by this or any other codifying measure. But since difficult cases are after all the minority, perhaps it is of some importance for men of business to be enabled to see for themselves the principles applicable to easy ones.

The Act does not deal with the rules of procedure governing actions by and against partnership firms, which are already codified in the Rules of Court, nor with the administration of the assets of firms and partners in bankruptcy, which is governed by the Bankruptcy Act and Rules, and the case-law which that Act assumes to be known. The parts of the present work relating to these topics are, for the convenience of presenting the subject as a whole, retained in their old form.

It will be observed that the Partnership Act does not purport to abrogate the case-law on the subject, but on the contrary declares that "the rules of equity and common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act" (sect. 46). The Act, therefore, will doubtless be read and applied in the light of the decisions which have built up the existing rules. Should any practitioner imagine that he might now relegate Lord Justice Lindley's book, for example, to an upper shelf, he would be soon undeceived. Codes are not