Principles of the English law of contract and of agency in its relation to contract

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OF THE

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AND OF

AGENCY IN ITS RELATION TO CONTRACT
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AGENCY IN ITS RELATION TO CONTRACT

BY

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WARDEN OF ALL SOULS COLLEGE, OXFORD

Eighth Edition

FIRST AMERICAN COPYRIGHT EDITION

EDITED WITH AMERICAN NOTES

BY

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NOTE TO THE AMERICAN EDITION.

The object of this authorized American edition of Sir William Anson's well-known treatise, is to give parallel references to selected American authorities where the American law corresponds with the English law as stated by the author, and to indicate clearly the points at which the American authorities either disagree wholly with the English law, or are strongly divided among themselves. No attempt at exhaustive citation of authorities has been made. The simplicity and conciseness of the author's treatment would be marred by a large citation of cases, and the book would be to that extent less useful to the student. If the editor's citations exceed in amount those of the author, it is only because the American law is the law of upwards of fifty jurisdictions, while the English law is the law of but one.

The abbreviation, "H. & W.," following the citation of cases, refers to "Huffcut and Woodruff's American Cases on Contract," a volume prepared especially to accompany Sir William Anson's text.

Statutory changes have generally been indicated by references to Stimson's American Statute Law, a work of great service to American students and practitioners.
NOTE TO THE AMERICAN EDITION.

It is hoped that this edition may serve to increase the usefulness of a book which is already the universally acknowledged model of what a student's book should be.

E. W. H.

CORNELL UNIVERSITY, SCHOOL OF LAW,
October, 1895.
PREFACE TO THE SIXTH EDITION.

When the subject of Contract was first introduced into the School of Jurisprudence at Oxford, in the year 1877, teachers of Law had to consider the books which their pupils might best be directed to read. Some works on the subject of acknowledged value to the practising lawyer were hardly suitable for beginners, and the choice seemed to lie between the works of Mr. Leake, Sir Frederick Pollock, and the late Mr. Smith. Of these, Mr. Smith alone wrote expressly for students, and I had, as a student, read his book with interest and advantage. But I thought that it left room for an elementary treatise worked out upon different lines.

Neither Sir Frederick Pollock nor Mr. Leake wrote for beginners, and I feared lest the mass of statement and illustration which their books contain, ordered and luminous though it be, might tend to oppress and dishearten the student entering upon a course of reading for the School of Law. Being at that time the only public teacher of English Law in the University, I had some practical acquaintance with the sort of difficulties which beset the learner, and I endeavoured to supply the want which I have described.

In working out the plan of my book I necessarily studied the modes of treatment adopted by these two writers, and I became aware that they are based on two totally different principles. Mr. Leake treats the con-
tract as a subject of litigation, from the point of view of the pleader's chambers. He seems to ask, What are the kinds of contract of which this may be one? Then—What have I got to prove? By what defences may I be met? Sir Frederick Pollock regards the subject *ab extra*; he inquires what is the nature of that legal relation which we term contract, and how it is brought about. He watches the parties coming to terms, tells us how the contract may be made, and by what flaws in its structure it may be invalidated. Mr. Leake treats the subject from every point of view in which it can interest a litigant. Sir Frederick Pollock wrote a treatise on the Formation of Contract: only in later editions has he introduced a chapter on Performance.

To both these writers I must own myself to be under great obligations. If I try to apportion my gratitude, I should say that perhaps I obtained the most complete information on the subject from Mr. Leake, but that Sir Frederick Pollock started me on my way.

The object which I set before me was to trace the principles which govern the contractual obligation from its beginning to its end; to show how a contract is made, what is needed to make it binding, whom it may affect, how it is interpreted, and how it may be discharged. I wished to do this in outline, and in such a way as might best induce the student to refer to cases, and to acquire the habit of going to original authorities instead of taking rules upon trust. So I have cited few cases: not desiring to present to the reader all the modes in which principles have been applied to facts, and perhaps imperceptibly qualified in their application, but rather to illustrate general rules by the most recent or most striking decisions.

In successive editions I have made some changes of arrangement, and have tried to keep the book up to date. Since it first appeared, in 1879, the Legislature has been