

Canada Law Journal.

VOL. XLIX.

TORONTO, NOVEMBER 1

No. 21

THE LAW MERCHANT IN CANADA.

There is no part of the history of English law more obscure, said Lord Blackburn,¹ than that connected with the common maxim that the law merchant is part of the law of the land. There is, however, to-day a considerable volume of easily accessible material in English on the history of the law merchant² apart from foreign works and works of a more special character.

This *lex mercatoria* or custom of merchants was formerly not part of the common law of England as it is now, but was a concurrent and co-existent law or custom. It comprised, in addition to a body of maritime law of international character, a body of customary commercial law recognized both in England and on the continent of Europe and slightly affected perhaps by local variations. Up to the reign of Edward III. the law merchant in both its branches was administered in England by local and popular courts of merchants, mariners or civic

(1) Blackburn on Sales, 3 ed., p. 345.

(2) See, e.g., the publications of the Selden Society, especially *Select Cases concerning the Law Merchant, 1270-1638* (vol. 1, Local Courts); *Select Pleas in the Court of Admiralty* (vol. 1, Court of Admiralty of the West, 1390-1404, High Court of Admiralty, 1527-1545; vol. 2, High Court of Admiralty, 1547-1602); also the following essays and extracts from other works: T. E. Scrutton, *General Survey of the History of the Law Merchant*, being chapter 1 of the *Elements of Mercantile Law*, 1891, reprinted in 3 *Select Essays in Anglo-American Legal History*, 1909, p. 7; B. E. S. Brodhurst, *The Merchants of the Staple*, 17 L.Q.R. 56, 1901, reprinted in 3 *Select Essays*, p. 16; A. T. Carter, *Early History of the Law Merchant*, 17 L.Q.R. 232, 1901; F. M. Burdick, *What is the Law Merchant?* 2 *Columbia L.R.* 470, 1902, reprinted in 3 *Select Essays*, etc., p. 34, under the title *Contributions of the Law Merchant to the Common Law*; W. S. Holdsworth, *History of English Law*, vol. 1, c. 7, p. 300, 1903, reprinted in 1 *Select Essays*, etc., p. 289, under the title *The Development of the Law Merchant and its Courts*; W. Mitchell, *Essay on the Early History of the Law Merchant*, Cambridge, 1904; T. A. Street, *Foundations of Legal Liability*, vol. 2, c. 31, p. 324, Northport, N.Y., 1906; see also essays in regard to the early history of negotiable instruments referred to in a subsequent note.