substance and not the form of the transaction. If in substance the object of the transaction is to secure the repayment of a debt, and not to transfer the absolute property in the thing sold, the law at once annexes to the transaction the complex consequences which attach to a mortgage. So, too, it is not always easy to distinguish a contract for the sale of an article from a contract for the supply of work and materials. If a man orders a set of false teeth from a dentist the contract is one of sale, but if he employs a dentist to stop one of his teeth with gold the contract is for the supply of work and materials. The distinction is of practical importance, because very different rules of law apply to the two classes of contract. The property which may be the subject of sale may be either movable or immovable, tangible or intangible. The present article relates only to the sale of goods —that is to say, tangible movable property. By the laws of all nations the alienation of land or real property is, on grounds of public policy, subject to special regulations. It is obvious that the assignment of “ things in action,” such as debts, contracts and negotiable instruments, must be governed by very different principles from those which regulate the transfer of goods, when the object sold can be transferred into the physical possession of the transferee.

In 1847, when Mr Justice Story wrote his work on the sale of personal property, the law of sale was still in process of development.

Many rules were still unsettled, especially the rules relating to implied conditions and warranties. But for several years the main principles have been well settled.

In 1891 the subject seemed ripe for codification, and Lord Herschell introduced a codifying bill which two years later passed into law as the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71). Sale is a consensual contract. The parties to the contract may supplement it with any stipulations or conditions they may see fit to agree to. The code in no wise seeks to fetter this discretion. It lays down a few positive rules—such, for instance, as that which reproduces the 17th section of the Statute of Frauds. But the main object of the act is to provide clear rules for those cases where the parties have either formed no intention or have failed to express it. When parties enter into a contract they contemplate its smooth performance, and they seldom provide for contingencies which may interrupt that performance— such as the insolvency of the buyer or the destruction of the thing sold before it is delivered. It is the province of the code to provide for these contingencies, leaving the parties free to modify by express stipulation the provisions imported by law. When the code was in contemplation the case of Scotland gave rise to difficulty. Scottish law varies widely from English. To speak broadly, the Scottish law of sale differs from the English by adhering to the rules of Roman law, while the English common law has worked out rules of its own. Where two countries are so closely connected in business as Scotland and England, it is obviously inconvenient that their laws relating to commercial matters should differ. The Mercantile Law Commission of 1855 reported on this question, and recommended that on certain points the Scottish rule should be adopted in England, while on other points the English rule should be adopted in Scotland. The recommendations of the Commission were partially and rather capriciously adopted in the English and Scottish Mercantile Law Amendment Acts of 1856. Certain rules were enacted for England which resembled but did not really reproduce the Scottish law, while other rules were enacted for Scotland which resembled but did not really reproduce the English law. There the matter rested for many years. The Codifying Bill of 1891 applied only to England, but on the advice of Lord Watson it was extended to Scotland. As the English and Irish laws of sale were the same, the case of Ireland gave rise to no difficulty, and the act now applies to the whole of the United Kingdom. As regards England and Ireland very little change in the law has been effected. As regards Scotland the process of assimilation has been carried further, but has not been completed. In a few cases the Scottish rule has been saved or re- enacted, in a few other cases it has been modified, while on other points, where the laws were dissimilar, the English rules have been adopted.

Now that the law has been codified, an analysis of the law resolves itself into an epitome of the main provisions of the statute. The act is divided into six parts, the first dealing with the formation of the contract, the second with the effects of the contract, the third with the performance of the contract, the fourth with the rights of an unpaid seller against the goods, and the fifth with remedies for breach of contract, the sixth part is supplemental. The 1st section, which may be regarded as the keystone of the act, is in the following terms: *“ A* contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. A contract of sale may be absolute or conditional. When under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a 'sale,’ but when the transfer of the property in the goods is to take place at a future time or subject to some

condition thereafter to be fulfilled the contract is called an 'agree­ment to sell.’ An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.” This section clearly enunciates the consensual nature of the contract, and this is confirmed by section 55, which provides that “ where any right, duty or liability would arise under a contract of sale by implication of law,” it may be negatived or varied by express agreement, or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract. The next question is who can sell and buy. The act is framed on the plan that if the law of contract were codified, this act would form a chapter in the code. The question of capacity is therefore referred to the general law, but a special provision is inserted (section 2) relating to the supply of necessaries to infants and other persons who are incompetent to contract. Though an infant cannot contract he must live, and he can only get goods by paying for them. The law, therefore, provides that he is liable to pay a reasonable price for necessaries supplied to him, and it defines necessaries as “ goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.”

The 4th section of the act reproduces the famous 17th section of the Statute of Frauds, which was an act "for the prevention of frauds and perjuries.” The object of that statute was to prevent people from setting up bogus contracts of sale by requiring material evidence of the contract. The section provides that “ a contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged, or his agent in that behalf.” It is a much disputed question whether this enactment has done more good or harm. It has defeated many an honest claim, though it may have prevented many a dishonest one from being put forward. When judges and juries have been satisfied of the *bona fides* of a contract which does not appear to satisfy the statute, they have done their best to get round it. Every expression in the section has been the subject of numerous judicial decisions, which ran into almost impossible refinements, and illustrate the maxim that hard cases make bad law. It is to be noted that Scotland is excluded from the operation of section 4. The Statute of Frauds has never been applied to’ Scotland, and Scotsmen appear never to have felt the want of it.

As regards the subiect-matter of the contract, the act provides that it may consist either of existing goods or “ future goods ”—that is to say, goods to be manufactured or acquired by the seller after the making of the contract (§ 5). Suppose that a man goes into a gunsmith’s shop and says, “ This gun suits me, and if you will make or get me another like it I will buy the pair.” This is a good contract, and no question as to its validity would be likely to occur to the lay mind. But lawyers have seriously raised the question, whether there could be a valid contract of sale when the subject-matter of the contract was not in existence at the time when the contract was made. The price is an essential element in a contract of sale. It may be either fixed by the contract itself, or left to be determined in some manner thereby agreed upon, *e.g.* by the award of a third party. But there are many cases in which the parties intend to effect a sale, and yet say nothing about the price. Suppose that a man goes into a hotel and orders dinner without asking the price. How is it to be fixed? The law steps in and says that, in the absence of any agree- mcnt, a reasonable price must be paid (§ 8). This prevents extortion on the part of the seller, and unreasonableness or fraud on the part of the buyer.

The next question dealt with is the difficult one of conditions and warranties (§§ 10 and 11). The parties may insert what stipulations they like in a contract of sale, but the law has to interpret them. The term “ warranty ” has a peculiar and technical meaning in the law of sale. It denotes a stipulation which the law regards as collateral to the main purpose of the contract. A breach, therefore, does not entitle the buyer to reject the goods, but only to claim damages. Suppose that a man buys a particular horse, which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer’s only remedy is to claim damages, unless he has expressly reserved a right to return it. But if, instead of buying a particular horse, a man applies to a dealer to supply him with a quiet horse, and the dealer supplies him with a vicious one, the stipulation is a condition. The buyer can either return the horse, or keep it and claim damages. Of course the right of rejection must be exercised within a reasonable time. In Scotland no distinction has been drawn between conditions and warranties, and the act preserves the Scottish rule by providing that, in Scotland, “ failure by the seller to perform any material part of a contract of sale" entitles the buyer either to reject the goods within a reasonable time after delivery, or to retain them and claim compensation (§ 11 (2)). In England it is a very common trick for the buyer to keep the goods, and then set up in reduction of the price that they are of inferior quality to what was ordered. To discourage this practice in Scotland the act provides that, in that country, the court may require the buyer who alleges a breach of contract to bring the agreed price into court