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THE NATURE OF WARRANTY OF QUALITY*

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The utter confusion prevailing on the subject of warranty has been deplored in various places,¹ and is acutely felt in this country, in Louisiana as well as in the common law states. The readers of this review have been ably informed² about the different rules of the common law, the Uniform Sales Act, the French law, and their reconciliation attempted by the international draft entitled "Uniform Law on International Sale of Goods."³ This draft has been based on the conviction that the current difficulties are mainly caused by the irrational survival of historical peculiarities and that the entire institution of warranty ought to be simplified and integrated into the general structure of the sales contract. There was hope for general acknowledgment of this thesis, and a German writer has recently even surpassed its implications, by giving farewell to warranty.⁴ But in this country, the Uniform Commercial Code (May 1949 Draft) has come to dampen exuberance. While it successfully completes the merger of remedies for breach of con-

*The author has been preparing for years a complete English version of his work on comparative sales law, the first volume of which was published in German, "Das Recht des Warenkaufs," 1936. The present paper is a preliminary and condensed form of the initial chapter on warranty of quality, omitting many of the decisions and literary documentation.

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¹See, e.g., 3 Williston, *A Treaties on the Law of Contracts* (1936) 1932, § 673; Vold, *Handbook of the Law of Sales* (1931) 436, § 146; in Italy, De Gregorio, in Part 2 of 12 *Nuovo Digesto Italiano* 955, § 102.

²Morrow, *Warranty of Quality: A Comparative Survey*, 14 *Tulane L. Rev.* 327, 529 (1940). I am glad to see that we appreciate in rather similar manner the necessity of a new suitable order. See *Comments*, 23 *Tulane L. Rev.* 83, 96, 119, 130, 140, 154 (1948).

³Projet d'une loi uniforme sur la vente internationale des objets mobiliers corporels (1935). A second draft under the same title, *League of Nations 1939—U. D. P.—Projet I* (1), with a revised formulation of the rules on warranty, has also been published in French and English in the volume, "Unification of Law," by the International Institute for the Unification of Private Law, Rome 1948.

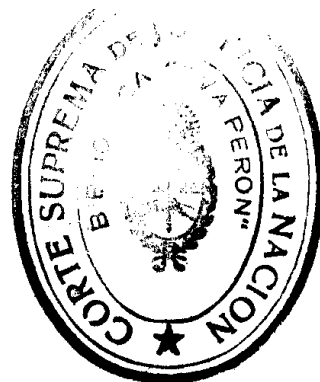
⁴Korintenberg, *Abschied von der Gewährleistung, Gedanken zum Weltkaufgesetz*, offprint from *Justizblatt für den Oberlandesgerichtsbezirk Köln*, May 15, 1947.

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