A treatise on the law of easements

Gale Charles James
L. MONK SMITH.

A TREATISE

ON THE

LAW OF EASEMENTS.
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THE SEVENTH EDITION

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PREFACE

TO THE SEVENTH EDITION.

In the present Edition the Editor has adhered to the system of working the new cases into the text, instead of referring to them only in the foot-notes. But it has no longer been found possible to distinguish the additions made by the several Editors from one another, and all of them are accordingly enclosed in plain brackets. The notes to bracketed portions of the text are not bracketed. In a few cases the order of the sentences in the text has been slightly modified without the attention of the reader being called to the change.

In the present Edition every case is dated. In a matter depending so much on case-law as the law of easements, the year in which a decision was given is of great importance; and it is often necessary, in weighing conflicting dicta or decisions, to refer to the dates at which they were respectively pronounced. The date is also useful as enabling the reader to trace the several contemporary reports of the same case (a).

(a) Professor Pollock, in a note to his 'Law of Torts,' gives the following direction:—"The consecutive numbers (in N. S.) of the volumes of the Law Journal for a given legal year may be found by subtracting thirty from the year of the century in which the legal year (Michaelmas Term to Michaelmas Term) begins. For the Weekly Reporter, similarly, subtract 51." For the Law Times Reports (N. S.), of which two volumes are published every year, subtract 58, multiply the remainder by 2, and search in the volume bearing the number of the product, and in the preceding volume.
In quoting from the Law Reports from 1875 to 1890, reports of decisions of the High Court are referred to by the letters Ch. D. or Q. B. D., as the case may be; reports of decisions of the Court of Appeal, by the letters Ch. Div. or Q. B. Div. References to the Digest are now distinguished by book and chapter, as well as by title, Krueger and Mommsen's edition of the "Corpus Juris Civilis" (Berlin, 1877) being used.

The Editor has to thank Mr. G. B. Rooke, of the Chancery Bar, for kindly revising the Index and List of Cases for the purposes of this Edition. He is also indebted to members of both branches of the Profession for valuable suggestions.

Some of the most recent decisions—such as those in Wheeler v. Barrows, Dalton v. Angus, and Scott v. Pape—have involved arguments of great complexity, and have established principles of the utmost moment in relation to the subject-matter of this treatise; but these decisions, with the exception of the first-named, have called rather for addition to than for modification of the Author's text, the greater part of which has successfully stood the strain of sixty years' criticism and discussion, and remains of great authority in connection with the branch of the law with which it is concerned.

G. C.
PREFACE
TO THE FIRST EDITION.

The want of a treatise upon those important rights known in the Law of England by the name of "Easements" has, it is believed, been sensibly felt by the Profession.

The length of time which has elapsed without any attempt having been made to supply this want affords a sufficient reason for the appearance of the present Essay. The difficulties which arise from the abstruseness and refinements incident to the subject, have been increased by the comparatively small number of decided cases affording matter for defining and systematizing this branch of the law. Upon some points, indeed, there is no authority at all in the English Law;—of the decisions, some depend upon the circumstances of the particular case, and some are irreconcilable with each other.

Water-courses are the only class of Easements with regard to which the law has been settled with any degree of precision.

A desire to remedy an admitted defect led to the passing of the Prescription Act—a statute, which has not only failed in effecting its particular object, but has introduced greater doubt and confusion than existed before its enactment. In fact, had it not been held, that the statute did not repeal the Common Law, many rights which have been enjoyed immemorially would have been put an end to by circumstances which never could have been intended to have that effect.

As in many other branches of the law of England, the earlier authorities upon the law of Easements appear to be based upon the Civil Law, modified, in some degree, probably, by a recognition of customs which existed among our Norman ancestors. The
most remarkable instance of an adoption by the English Law from this source is the doctrine known in the French law by the title of "Destination du père de famille."

In the majority of the cases, both ancient and modern, probably from a consideration of this being the origin of the law, recourse has been had for assistance to the Civil Law. It has, therefore, been considered that the utility of the work would be increased by the introduction of many of the provisions of that refined and elaborate system with respect to Prædial Servitudes, and the doctrine of Prescription; as well as some of the observations of Pardessus—an eminent French writer on Servitudes.

With the same view the authority of decisions in the American Courts has been called in aid upon the subject of water-courses—questions which the value of water as a moving power, and the frequent absence of ancient appropriation, have often given rise to in the United States. In those judgments the law is considered with much care and research, and the rights of the parties settled with precision. The result of the authorities is stated by Chancellor Kent, in his well-known Commentaries, with his usual ability.

Upon many points, particularly upon the construction of the Prescription Act, the observations contained in the following pages are, in some degree, unsupported by direct authority. It has, however, been thought better to endeavour to open the law upon the doubts which presented themselves than to pass them over in silence.

*Temple,*
*July, 1839.*
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