Principles of the Law of Scotland

Erskine John
PRINCIPLES

OF THE

LAW OF SCOTLAND.
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BY
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CONTAINING
EXTRACTS FROM THE LECTURES OF
GEORGE MOIR, ESQ., ADVOCATE,
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OF EDINBURGH.

SIXTEENTH EDITION,
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PREFIXED TO THE FIRST EDITION.

Though the Institutions of the Law of Scotland, which were written by the learned Sir George Mackenzie of Rosehaugh, have been justly received with universal approbation, it must, at the same time, be confessed that his fondness to reduce the Work within the compass of a small duodecimo led him either to omit altogether, or to treat more slightly, several important articles relating to his subject. Nor, indeed, is that Author's Compend so useful at present as it was formerly; because of these many and considerable alterations which the Law of Scotland has undergone since its publication.

The following sheets are designed to supply these defects; and, by exhibiting a more full and complete view of the principles and general system of our Law, to prepare the reader for deeper researches into that study.

Sensible of the difficulty of composing a Treatise of this kind, where every word requires accuracy and precision, I subjected my Essay, after having employed
my utmost skill upon it, to several Gentlemen distinguished by their knowledge of the Law; to whom I embrace this public opportunity of offering my sincere acknowledgments for the trouble they have taken in revising it, and for their judicious remarks and just amendments.

If, after all I have done, this attempt shall answer my design, I shall be happy in reflecting that my labours have not been useless to my Country.

JOHN ERSKINE.

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PREFACE TO THE FOURTEENTH EDITION

BY

WILLIAM GUTHRIE, ESQ., LL.D., ADVOCATE.

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Though the excellences of Erskine's Principles as a summary of Scots Law, and the authority of the book as the only work of its Author which received his last revising touches, have always been recognised, its usefulness has been impaired by the lapse of time, and the changes in the law produced by legislation and judicial decision. Nor during the century that has elapsed since the last publication in the Author's lifetime has the book ever been re-edited in the proper sense of the
term. A large proportion of the few notes given in the editions published under the care of Professor Schank More consists merely of references to the titles in Morison's Dictionary. Mr. Guthrie Smith published in 1860 "A New Edition, adapted to the present state of the law." But whatever advantages that book may have derived from Mr. Smith's power of lucid exposition, it did not supply the want of an edition of Erskine's Principles, the arrangement being different, many passages being omitted or re-written, and the divisions by which the Profession had been in the habit of referring to the book being altogether dropped out.

This attempt to make Erskine's Principles a convenient handbook for the student of the present day was undertaken at the request of Professor Macpherson, by whom the book has been restored to its original position as the Scots Law Manual in the Metropolitan University, and from whom the Editor has received valuable suggestions as to its plan. The Editor, while religiously preserving the whole text as it was left by the Author, has endeavoured to add, in notes, such information as it may be supposed that the Author would have embodied in the text if he had been writing now. He has thus had to travel over great part of the statute and case law of a hundred years. He has also pointed out the more important instances of discrepancy between the Principles and the Institutes; and to aid those who desire upon any subject to consult the fuller and most recent expositions of Mr. Erskine, references
to the corresponding passages in the Institutes have been given on the margin of each section. He has given the numerical references to the book and title of the passages in the Corpus Juris Civilis, which the Author cited according to the custom of his time; and he has filled up the references to the pages in Morison's Dictionary, where the cases quoted in the text are to be found,—an editorial duty which was omitted in every former edition.

The editorial work, commenced in the spring of 1869 and continued amid many interruptions, was completed in time to admit of the issue of the book to students in parts during the University session of 1869-70. The defects of execution which will be found to exist would have been much more serious, and indeed the completion of the task within this time would have been impossible, if the Editor had not been allowed to use the MS. Lectures of Mr. George Moir, Advocate, lately Professor of Scots Law in the University of Edinburgh. The extracts from these, whether they are in the form of foot-notes or of excursive notes at the end of Titles, have been printed as quotations, with the name of the learned author affixed. In order more effectually to supply the chief defect of the work of Mr. Erskine, since whose day Mercantile Law has been so greatly developed, it has been thought best to give the views of Mr. Moir on some branches of that subject in the form of continuous chapters at the end of Titles. Considerable
abridgment and rearrangement of the text of the Lectures has of course been necessary to adapt them to the purpose of the present work, but the words of the original have always been retained; and that their authority might not be impaired, the whole of the extracts have been kindly revised in proof by Mr. Moir himself. The Editor's foot-notes to Erskine will be easily distinguished by the absence of marks of quotation; and in a few cases additions to the foot-notes taken from Mr. Moir have been inserted within square brackets, thus [ ].

It is hoped that the use which has thus been made of the unpublished writings of so eminent a lawyer will give this volume a value and interest to the Profession which it could not otherwise have possessed.

The Editor has to acknowledge his obligations to those who have assisted him in the preparation of this Edition, especially to Professor Macpherson, who has read most of the proof sheets; to Mr. John Cheyne, Advocate, who is entirely responsible for the Titles on Arrestments and Poindings, and on Crimes, and whose name is a sufficient guarantee for accuracy and legal knowledge; and to Mr. Colin H. M'Lachlan, Advocate, who, besides giving other valuable assistance, has prepared the Index of Matters.

8 Fettes Row, Edinburgh,
March, 1870.