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IN
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FIFTH EDITION

BY

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PARRISTER-AT-LAW,
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PREFACE

Practical experience during many years of the use of Brett's Equity Cases with students has convinced us that for their purposes, in the course of successive editions, the book had become overloaded with detail. In preparing this edition, we have therefore taken full advantage of the permission kindly accorded to us by Messrs. Butterworth and Co. to modify the text wherever it seemed desirable to do so, and have, to a great extent, re-written the notes to the leading cases throughout the book with the view of making them as clear and simple as the nature of the subject permits. Our main purpose has been to make the work intelligible to students, and we have therefore contented ourselves with a reference to the decisions which seemed most useful to them without attempting to incorporate every case that has been decided on the subjects dealt with. The leading cases remain, for the most part, the same as those in the last edition, but in view of the aim of the late Mr. Brett we have, in a few instances, substituted later decisions where it seemed necessary to do so to illustrate the doctrines of "modern Equity." Thus, in lieu of Steed v. Price [L. R. 18 Eq. 192] we have inserted Burgess v. Booth [(1908) 2 Ch. 648], since what was only an obiter dictum of Sir George Jessel in the former was made the actual decision of the Court of Appeal in the latter. To this we have added two cases, Haynes v. Haynes (1 Dr. & Sm. 426) and In re Lord Grimthorpe [(1908) 2 Ch. 675], the judgments in which exhibit more plainly than any others the principles on which the doctrine of equitable conversion has been based in modern times.

Upon mortgages we have added the important House of Lords cases, Noakes v. Rice [(1902) A. C. 24] and Pledge v. White [(1896) A. C. 187] and the Court of Appeal decision in West v.
Williams ([1899] 1 Ch. 132), and in connection with restrictive covenants the decision of the Court of Appeal in In re Nisbett and Potts Contract ([1906] 1 Ch. 386). On the other hand, we have omitted several cases on the practice under the Judicature Acts and Rules which though no doubt of considerable importance when Mr. Brett first brought out his book in 1887 are now of diminished interest. We have also re-grouped the leading cases with a view to making the book a somewhat more connected statement of equitable principles, and also with a view to rendering it more serviceable as a companion volume to the treatises on equity which students usually read.

We cannot hope that in the effort to achieve our aims we have avoided all errors and omissions. For such as may be found we ask indulgence, and trust that this edition may receive the favourable consideration of students and the profession.

J. A. SHEARWOOD.
WALTER G. HART.

August, 1911.
EXTRACT FROM PREFACE TO FIRST EDITION

The object which I have had in view in writing this book is to illustrate, by means of leading cases, the doctrines of "modern Equity." That great judge, Sir George Jessel, in his celebrated judgment in In re Hallett's Estate, Knatchbull v. Hallett (13 Ch. D. 696, 710), . . . pointed out that the moment the fiduciary relation was established between the parties, that moment the "modern doctrines of equity" applied. "I intentionally," the judgment proceeds, "say modern rules, because it must not be forgotten that the rules of Equity are not, like the rules of the Common Law, supposed to have been established from time immemorial. No doubt they were invented for the purpose of securing the better administration of justice, but still they were invented. Take such things as these—the separate use of a married woman, the restraint on alienation. We can name the Chancellors who first invented them, and state the date when they were first introduced into Equity jurisprudence, and therefore in cases of this kind the older precedents in Equity are of very little value. The doctrines are progressive, refined, altered and improved; and if we want to know what the rules of Equity are, we must look, of course, rather to the more modern than the more ancient cases."

To this it may be added, that the great changes which have been introduced by recent statutes and orders into the principles and practice of Equity have still further diminished the value of the "older precedents," and in many cases have rendered them practically obsolete. Thus, to cite only two illustrations
from among several which might be mentioned. Even since 1879, when the late Master of the Rolls delivered his judgment in *In re Hallett’s Estate*, the old principles of the law as to restraint on anticipation (see p. 230 *et seq.*; p. 172 in the present edition) have been greatly modified by the *Conveyancing Act*, 1881. Within the last few years the old practice as to administration (see p. 320 *et seq.*; p. 126 in the present edition) has been revolutionized by the Orders under the *Judicature Act*.

Reasons such as these would seem amply sufficient to justify the appearance of a new volume dealing professedly with "modern Equity." Thus far as to the substance of the work. A word now as to its form. The form of leading cases has been selected as best calculated to interest the reader, and impress the modern doctrines on the minds alike of students and practitioners.

I desire to express my warmest acknowledgments to Mr. James Pickup and Mr. John Marsh Dixon, of 6, Stone Buildings, Lincoln’s Inn, for their most valuable assistance throughout the whole of this book, and also to Mr. William Tucker and Mr. J. W. Blagg, for friendly aid rendered in respect of portions of it, and to submit my work to the favourable consideration of the profession to which I have the honour to belong.

THOMAS BRETT.

Lincoln’s Inn,

*July, 1887.*
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