

Principles of the law of Real Property

In this Edition the alterations which have taken place in the law since the publication of the last Edition have been incorporated in the text. The author has also endeavoured to improve the work by a few additions, which it appeared to him might advantageously be made without infringing on its elementary character.

PRINCIPLES
OF THE
LAW OF REAL PROPERTY

INTENDED AS
A FIRST BOOK
FOR
THE USE OF STUDENTS IN CONVEYANCING

BY
JOSHUA WILLIAMS, ESQ.
OF LINCOLN'S, BARRISTER AT LAW

SIXTH EDITION

ECUS

2026

УДК 347.2(410)

Редакційна колегія:

Іван Павлович Жигалкін — д.ю.н., доц., суддя
господарського суду Харківської області.

Ілларіон Андрійович Спасибо — к.ю.н., адвокат.

РЕПРИНТ

ISBN 978-617-7934-43-0

ADVERTISEMENT

TO THE SIXTH EDITION.



In this Edition the alterations which have taken place in the law since the publication of the last Edition have been incorporated in the text. The author has also endeavoured to improve the work by a few additions, which it appeared to him might advantageously be made without infringing on its elementary character.

7, New Square, Lincoln's Inn,
December, 1861.

PREFACE.

TO THE FIRST EDITION.



THE Author had rather that the following pages should speak for themselves, than that he should speak for them. They are intended to supply, what he has long felt to be a desideratum, a First Book for the use of students in conveyancing, as easy and readable as the nature of the subject will allow. In attempting this object he has not always followed the old beaten track, but has pursued the more difficult, yet more interesting, course of original investigation. He has endeavoured to lead the student rather to work out his knowledge for himself, than to be content to gather fragments at the hands of authority. If the student wishes to become an adept in the practice of conveyancing, he must first be a master of the science; and if he would master the science, he should first trace out to their sources those great and leading principles, which, when well known, give easy access to innumerable minute details.

The object of the present work is not, therefore, to cram the student with learning, but rather to quicken his appetite for a kind of knowledge which seldom appears very palatable at first. It does not profess to present him with so ample and varied an entertainment as is afforded by Blackstone in his "Commentaries;" neither, on the other hand, is it as sparing and frugal as the "Principles" of Mr. Watkins; nor, it is hoped, so indigestible as the well-packed "Compendium" of Mr. Burton. This work was commenced many years ago; and it may be right to state that the substance of the introductory chapter has already appeared before the public in the shape of an article, "On the Division of Property into Real and Personal," in the "Jurist" newspaper for 7th September, 1839. The recent Act to simplify the transfer of property has occasioned many parts of the work to be re-written. But as this act has so great a tendency to bewilder the student, the Author has since lost no time in committing his manuscript to the press, in hopes that he may be the means of bringing the minds of such beginners as may peruse his pages to that tone of quiet perseverance which alone can enable them to grapple with the increasing difficulties of

Real Property Law. From the elder members of his profession he requests, and has no doubt of obtaining, a candid judgment of his performance of a most difficult task. To give to each principle its adequate importance,—from the crowds of illustrations to present the best—to write a book readable, yet useful for reference,—to avoid plagiarism, and yet abide by authority,—is indeed no easy matter. That in all this he has succeeded he can scarcely hope. How far he has advanced towards it must be left for the profession to decide.

3, NEW SQUARE, LINCOLN'S INN,
29th November, 1844.

TABLE OF CONTENTS.

	PAGE
INTRODUCTORY CHAPTER.	
OF THE CLASSES OF PROPERTY	1
PART I.	
OF CORPOREAL HEREDITAMENTS.....	13
CHAP. I.	
OF AN ESTATE FOR LIFE	16
CHAP. II.	
OF AN ESTATE TAIL	33
CHAP. III.	
OF AN ESTATE IN FEE SIMPLE	57
CHAP. IV.	
OF THE DESCENT OF AN ESTATE IN FEE SIMPLE	89
CHAP. V.	
OF THE TENURE OF AN ESTATE IN FEE SIMPLE	105
CHAP. VI.	
OF JOINT TENANTS AND TENANTS IN COMMON.....	120
CHAP. VII.	
OF A FEOFFMENT	127

	PAGE
CHAP. VIII.	
OF USES AND TRUSTS	141
CHAP. IX.	
OF A MODERN CONVEYANCE.....	160
CHAP. X.	
OF A WILL OF LANDS	182
CHAP. XI.	
OF THE MUTUAL RIGHTS OF HUSBAND AND WIFE	200
—	
PART II.	
OF INCORPOREAL HEREDITAMENTS	214
CHAP. I.	
OF A REVERSION AND A VESTED REMAINDER	216
CHAP. II.	
OF A CONTINGENT REMAINDER	236
CHAP. III.	
OF AN EXECUTORY INTEREST	261
<i>Section 1.</i>	
OF THE MEANS BY WHICH EXECUTORY INTERESTS MAY BE CREATED	261
<i>Section 2.</i>	
OF THE TIME WITHIN WHICH EXECUTORY INTERESTS MUST ARISE	286
CHAP. IV.	
OF HEREDITAMENTS PURELY INCORPOREAL.....	290

PART III.

OF COPYHOLDS	315
--------------------	-----

CHAP. I.

OF ESTATES IN COPYHOLDS	319
-------------------------------	-----

CHAP. II.

OF THE ALIENATION OF COPYHOLDS	337
--------------------------------------	-----



PART IV.

OF PERSONAL INTERESTS IN REAL ESTATE	350
--------------------------------------	-----

CHAP. I.

OF A TERM OF YEARS	352
--------------------------	-----

CHAP. II.

OF A MORTGAGE DEBT	382
--------------------------	-----



PART V.

OF TITLE	399
----------------	-----



APPENDIX (A.)	417
---------------------	-----

APPENDIX (B.)	422
---------------------	-----

APPENDIX (C.)	435
---------------------	-----

APPENDIX (D.)	441
---------------------	-----

APPENDIX (E.)	451
---------------------	-----

APPENDIX (F.)	453
---------------------	-----

INDEX	455
-------------	-----

PRINCIPLES

OF THE

LAW OF REAL PROPERTY.

INTRODUCTORY CHAPTER.

OF THE CLASSES OF PROPERTY.

IN the early ages of Europe, property was chiefly of a substantial and visible, or what lawyers call, a corporeal kind. Trade was little practised (*a*), and consequently debts were seldom incurred. There were no public funds, and of course no funded property. The public wealth consisted principally of land (*b*), and the houses and buildings erected upon it, of the cattle in the fields, and the goods in the houses. Now land, which is immoveable and indestructible, is evidently a different species of property from a cow or a sheep, which may be stolen, killed, and eaten; or from a chair or a table, which may be broken up or burnt. No man, be he ever so feloniously disposed, can run away with an acre of land. The owner may be ejected, but the land remains where it was; and he, who has been wrongfully turned out of possession, may be reinstated into the identical portion of land from which he had been removed. Not

Property at first chiefly corporeal.

Land indestructible.

(*a*) 3 Hallam's Middle Ages, 367—369.

(*b*) 1 Hallam's Middle Ages, 158.

Moveables destructible.

so with moveable property; the thief may be discovered and punished; but if he has made away with the goods, no power on earth can restore them to their owner. All he can hope to obtain is a compensation in money, or in some other article of equal value.

Moveable and immoveable.

Moveable and *immoveable* (c) is then one of the simplest and most natural divisions of property in times of but partial civilization. In our law this division has been brought into great prominence by the circumstances of our early history.

The Norman conquest.

By the Norman conquest, it is well known a vast number of Norman soldiers settled in this country. The new settlers were encouraged by their king and master; and whilst the conquered Saxons found no favour at court, they suffered a more substantial grievance in the confiscation of the lands of such of them as had opposed the Conqueror (d). The lands thus confiscated were granted out by the Conqueror to his followers, nor was their rapacity satisfied till the greater part of the lands in the kingdom had been thus disposed of (e). In these grants the Norman king and his vassals followed the custom of their own country, or what is called the feudal system (f). The lands granted were not given freely and for nothing; but they were given to hold of the king, subject to the performance of certain military duties as the condition of their enjoyment (g). The king was still considered as in some sense the proprietor, and was called the lord paramount (h); while the services

(c) Quandoque res *mobiles*, ut cattalla, ponuntur in vadium, quandoque res *immobiles*, ut terræ, et tenementa, et redditus. Glanville, lib. x. c. 6. See also lib. vii. c. 16, 17.

(d) Wright's Tenures, 61, 62;

2 Black. Com. 48.

(e) 2 Hallam's Middle Ages, 424.

(f) Wright's Tenures, 63.

(g) 1 Hallam's Middle Ages, 178, 179, note.

(h) Coke upon Littleton, 65 a.

to be rendered were regarded as incident or annexed to the ownership of the land; in fact, as the rent to be paid for it.

This feudal system of tenures, or holding of the king, was soon afterwards applied to all other lands, although they had not been thus granted out, but remained in the hands of their original Saxon owners. How this change was effected is perhaps a matter of doubt. Sir Martin Wright (*i*), who is followed by Blackstone (*k*), supposes that the introduction of tenures, as to lands of the Saxons, was accomplished at a stroke by a law (*l*) of William the Conqueror, by which he required all free men to swear that they would be faithful to him as their lord. "The terms of this law," says Sir Martin Wright, "are absolutely feudal, and are apt and proper to establish that policy with all its consequences." Mr. Hallam, however, takes a different view of the subject; for while he considers it certain that the tenures of the feudal system were thoroughly established in England under the Conqueror (*m*), he yet remarks that by the transaction in question an oath of fidelity was required, as well from the great landowners themselves as from their tenants, "thus breaking in upon the feudal compact in its most essential attribute, the exclusive dependence of a vassal upon his lord" (*n*). The truth appears to be that Norman

Introduction
of the feudal
system.

(*i*) Wright's Tenures, 64, 65.

(*k*) 2 Black. Com. 49, 50.

(*l*) The 52nd. Statuimus ut omnes liberi homines fœdere et sacramento affirmant, quod intra et extra universum regnum Angliæ Wilhelmo regi domino suo fideles esse volunt; terras et honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere.

(*m*) 2 Hallam's Middle Ages, 429.

(*n*) 2 Hallam's Middle Ages, 430. Mr. Hallam refers to the Saxon Chronicle, which gives the following account:—Postea sic itinera disposuit ut pervenerit in festo Primitiarum ad Searebyrig (Sarum), ubi ei obviam venerunt ejus procures; et omnes prædia tenentes, quotquot essent notæ me-

customs, and their upholders and interpreters, Norman lawyers, were the real introducers of the feudal system of tenures into the law of this country. Before the conquest, landowners were subject to military duties (*o*); and to a soldier it would matter little whether he fought by reason of tenure, or for any other reason. The distinction between his services being annexed to his *land*, and their being annexed to the *tenure* of his land, would not strike him as very important. These matters would be left to those whose business it was to attend to them; and the lawyers from Normandy, without being particularly crafty, would, in their fondness for their own profession, naturally adhere to the precedents they were used to, and observe the customs and laws of their own country (*p*). Perhaps even they, in the time of the Conqueror, troubled themselves but little about the laws of landed property. The statutes of William are principally criminal, as are the laws of all half-civilized nations. Life and limb are of more importance than property; and when the former are in danger, the security of the latter is not much regarded. When the convulsions of the conquest began to subside, the Saxons felt the effects of the Norman laws, and cried out for the restoration of their own; but they were the weaker party and could not help themselves. By this time the industry of the lawyers had woven a net from which

lioris per totam Angliam, hujus viri servi fuerunt, omnesque se illi subdidere, ejusque facti sunt vassali, ac ei fidelitatis juramenta præstiterunt se contra alios quoscunque illi fidos futuros.—Sax. Chron. anno 1085.

(*o*) Sharon Turner's Anglo-Saxons, vol. ii. app. iv. c. 3, 560; 2 Hallam's Mid. Ages, 410.

(*p*) The Norman French was

introduced by the Conqueror as the regular language of the courts of law. See Hume's History of England, vol. ii. 115, appendix ii. on the Feudal and Anglo-Norman government and manners. A specimen of this language, which was often curiously intermixed by our lawyers with scraps of Latin and pure English, will be given in a future note.

PART I.

OF CORPOREAL HEREDITAMENTS.



BEFORE proceeding to consider the estates which may be held in corporeal hereditaments or landed property, it is desirable that the legal terms made use of to designate such property should be understood; for the nomenclature of the law differs in some respects from that which is ordinarily employed. Thus a house is by lawyers generally called a *messuage*; and the term *messuage* was formerly considered as of more extensive import than the word *house* (*a*). But such a distinction is not now to be relied on (*b*). Both the term *messuage* and *house* will comprise adjoining outbuildings, the orchard, and curtilage, or court yard, and, according to the better opinion, these terms will include the garden also (*c*). The word *tenement* is often used in law, as in ordinary language, to signify a house: it is indeed the regular synonyme which follows the term *messuage*; a house being usually described in deeds as "all that messuage or tenement." But the more comprehensive meaning of the word *tenement*, to which we have before adverted (*d*), is still attached to it in legal interpretation, whenever the sense requires (*e*). Again, the word *land* comprehends

Terms of the law.

A messuage.

Tenement.

Land.

(*a*) *Thomas v. Lane*, 3 Cha. Ca. 26; Keilw. 57.

(*b*) *Doe d. Clements v. Collins*, 2 T. Rep. 489, 502; 1 Jarman on Wills, 709, 1st ed.; 666, 2nd ed.; 740, 3rd ed.

(*c*) *Shep. Touch.* 94; *Co. Litt.* 5 b, n. (1); *Lord Grosvenor v.*

Hampstead Junction Railway Company, 1 De Gex & Jones, 446; *Cole v. West London and Crystal Palace Railway Company*, 27 Beav. 242.

(*d*) *Ante*, p. 5.

(*e*) 2 Black. Com. 16, 17, 59.

in law any ground, soil, or earth whatsoever (*f*); but its strict and primary import is arable land (*g*). It will, however, include castles, houses, and outbuildings of all kinds; for the ownership of land carries with it every thing both above and below the surface, the maxim being *cujus est solum, ejus est usque ad cælum*. A pond of water is accordingly described as *land* covered with water (*h*); and a grant of lands includes all mines and minerals under the surface (*i*). This extensive signification of the word *land* may, however, be controlled by the context; as where land is spoken of in plain contradistinction to houses, it will not be held to comprise them (*k*). So mines lying under a piece of land may be excepted out of a conveyance of such land, and they will then remain the corporeal property of the grantor, with such incidental powers as are necessary to work them (*l*), and subject to the incidental duty of leaving a sufficient support to the surface to keep it securely at its ancient and natural level (*m*). In the same manner, chambers may be the subjects of conveyance as corporeal property, independently of the floors above or below them (*n*). The word *premises* is frequently used in law in its proper etymological sense of that which has been before mentioned (*o*). Thus, after a recital of various facts in a deed, it frequently proceeds "in consideration of the *premises*," meaning in consideration of the facts

Mines.

Chambers.

Premises.

(*f*) Co. Litt. 4 a; Shep. Touch. 92; 2 Black. Com. 17; *Cooke*, dem. 4 Bing. 90.

(*g*) Shep. Touch. 92.

(*h*) Co. Litt. 4 b.

(*i*) 2 Black. Com. 18.

(*k*) 1 Jarman on Wills, 707, 1st ed.; 664, 2nd ed.; 738, 3rd ed.

(*l*) *Earl of Cardigan v. Armitage*, 2 Barn. & Cress. 197, 211.

(*m*) *Humphries v. Brogden*, 12 Q. B. 739; *Smart v. Morton*, 5 E.

& B. 30; *Rogers v. Taylor*, 2 H. & N. 828; *Rowbotham v. Wilson*, 8 E. & B. 123; *Bonomi v. Backhouse*, E. B. & E. 622; *Stroyan v. Knowles*, 6 H. & N. 454.

(*n*) Co. Litt. 48 b; Shep. Touch. 206. See 12 Q. B. 757.

(*o*) *Doe d. Biddulph v. Meakin*, 1 East, 456; 1 Jarman on Wills, 707, 1st ed.; 665, 2nd ed.; 739, 3rd ed.



Перейти на сайт →