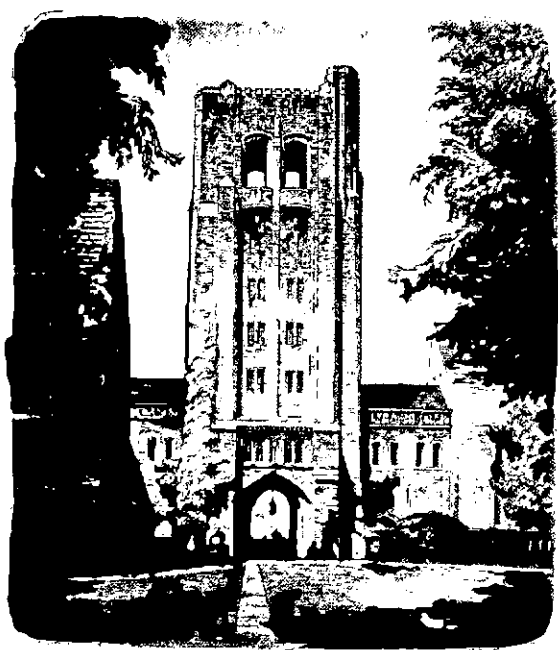


MODERN LAND LAW

JENKS



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HENRY FROWDE, M.A.

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MODERN LAND LAW

BY

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PREFACE.

TWENTY years' experience as a student, and some ten years of teaching, have led the author, rightly or wrongly, to the conclusion, that there is room for another textbook on the important and difficult subject of English Land Law. The class of readers by whom, as it appears to him, such a book is especially needed, consists of those students who, either at the Universities or elsewhere, have to get up their law without the attractions, or distractions, of professional surroundings. But he ventures to think that there are others to whom the book will be useful.

Needless to say, the author has not endeavoured to recommend his work by originality of views, nor by criticism of accepted doctrines. Modern English Land Law is a dogmatic system, which rests entirely on authority; and its contents are, with a few exceptions, free from doubt.

Again, the author has not allowed himself to dwell upon that most fascinating side of his subject, its history and antiquities. To say nothing of the fact that his own special topic demands all his ability, and all the space at his disposal, it would be useless for him to attempt to do again what has been so well done by Sir Kenelm Digby, in his *Introduction to the History of the Law of Real Property*. It is, on the other hand, the author's hope, that his book may serve as an useful appendage to Sir Kenelm Digby's

work; and he ventures to think, that the student who fairly masters both, will have a sound acquaintance with the principles of the subject.

But, in preparing his book, the author has kept two objects steadily in view. In the first place, he has endeavoured to state the result of the authorities, rather than the authorities themselves. To the student unfamiliar with the professional atmosphere, the language of statutes and judicial decisions is apt to be a trifle bewildering. And if, to the inevitable difficulties of the authorities, are added the difficulties of the commentator, the student may be forgiven if he sometimes despairs. In the following pages, the author has tried to combine authority and commentary in clear language. No one can realize more fully than himself the ambitious character of this attempt; it must be for his readers to say whether, or rather, how far, he has failed. But against one misapprehension, the author must protest. To give the essence and meaning, rather than the words, of the authorities, is not to neglect the authorities. Every statement in the text will be found to be fortified by the citation of its appropriate authority.

In the second place, the author has endeavoured to make each statement in his book appear precisely at the point at which the student would naturally expect to find it. By the practitioner, anything that savours of method is too often regarded with suspicion; but the author hopes to be able to convince even the practitioner, that it is easier, and therefore speedier, to consult a book based on a logical arrangement, than a work in which a mass of information is heaped up in the traditional style. And, whether he succeed or not, it is his duty, as well as his pleasure, to show the student the advantages of approaching a subject on a well-considered plan, expressly designed to avoid repetition and omission. That he has not lived up to his ideal in this respect, the author is only too painfully aware. But it has been some satisfaction to him to find, as the

work has progressed, that the fragments of the puzzle have seemed gradually to fit into one another.

It is the author's grateful task to acknowledge the kindness of those who have assisted him in his work. To his friend Mr. J. E. Harman, B.A., of Lincoln's Inn, who has spared time from his professional engagements to read the whole of the proof-sheets, his warmest thanks are owing. Although Mr. Harman takes, of course, no responsibility for the correctness of the statements in the book, it is due especially to him to say, that he considers the concluding part of Chapter XXV (on the powers of trustees) to be irrelevant to the matter in hand. No doubt he is strictly right; but the author has, after much reflection, and consultation with other^s friends, decided that, while the pages in question can hardly inconvenience any reader of the book, they may be of considerable convenience to the readers for whom it is primarily intended.

Those who have some practical acquaintance with the infinite mechanical difficulties of a work such as the present, will readily extend to the author their sympathy on the subject of the somewhat formidable list of *Errata*, with which it commences. That this list is not much longer, is due largely to the kindness of Mr. T. W. Marshall, B.C.L., of Lincoln College, who, in addition to the labour of preparing the Index, has voluntarily undertaken the final revision of the proof-sheets for the press.

Finally, the author desires to acknowledge the courtesy of the Warden and Fellows of All Souls College, who have accorded him exceptional privileges in the use of their valuable library, during the preparation of his work.

BALLIOL COLLEGE :
April 30, 1899.

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ABBREVIATIONS USED IN REFERENCES TO CASES.

A.

ABBREVIATIONS.	FULL TITLE.	DATES.
A. C.	Law Reports, Appeal Cases	1891-1899
A. & E.	Adolphus & Ellis (Queen's Bench)	1834-1840
Amb.	Ambler (Chancery)	1737-1783
Atk.	Atkyns (Chancery)	1736-1755

B.

B. & Ad.	Barnewall & Adolphus (King's Bench)	1830-1834
B. & Ald.	Barnewall & Alderson (King's Bench)	1817-1822
B. & C.	Barnewall & Cresswell (King's Bench)	1822-1830
Barn. Chy.	Barnardiston (Chancery)	1740-1741
Beav.	Beavan (Chancery)	1838-1866
Bing.	Bingham (Common Pleas)	1822-1834
Bing. N. S.	Bingham (New Cases)	1834-1840
Bli.	Bligh (House of Lords)	1819-1821
Br. Cha. Ca. (or Bro. C. C.)	Brown (Chancery)	1778-1794
Bro. P. C.	Brown (Parliamentary)	1702-1800
B. & S.	Best & Smith (Queen's Bench)	1861-1869
Burr.	Burrow (King's Bench)	1757-1771

C.

Campb.	Campbell (Nisi Prius)	1808-1816
Cart.	Cartier (Common Pleas)	1664-1676
Carth.	Carthew (King's Bench)	1686-1701
C. B.	Common Bench	1845-1856
C. B. (N. S.)	Common Bench (New Series)	1856-1865
Ch.	Law Reports, Chancery Division	1891-1899
Ch. D.	Law Reports, Chancery Division	1875-1890
Cha. Ca.	Cases in Chancery	1660-1688
Cha. Rep.	Reports in Chancery	1615-1712
Cl. & F.	Clark & Finnelly	1831-1846
Cowp.	Cowper (King's Bench)	1774-1778
Cox	Cox (Chancery)	1783-1796
C. & P.	Carrington & Payne (Nisi Prius)	1823-1841
C. P. D.	Law Reports, Common Pleas Division	1875-1880
Cr. M. & K.	Crompton, Meeson, & Roscoc (Exchequer)	1834-1836
Cro. Eliz. }	Croke, <i>temp.</i> Elizabeth, }	1582-1641
Cro. Jac. }	James I, and Charles I }	
Cro. Car. }		
Curt.	Curteis (Ecclesiastical)	1834-1844

xliv ABBREVIATIONS USED IN REFERENCES TO CASES.

D.

ABBREVIATIONS.	FULL TITLE.	DATES.
Dea. & Sw.	Deane & Swabey	1855-1857
De G. F. & J.	De Gex, Fisher, & Jones (Chancery)	1860-1862
De G. J. & S.	De Gex, Jones, & Smith (Chancery)	1862-1866
De G. M. & G.	De Gex, Macnaghten, & Gordon (Chancery)	1851-1857
De G. & S.	De Gex & Smale (Chancery)	1846-1852
Doug.	Douglas (King's Bench)	1778-1781
Dow & Cl.	Dow & Clark (House of Lords)	1827-1832
Dr. & W.	Drury & Warren (Irish Chancery)	1841-1843
Drew.	Drewry (Chancery)	1852-1859

E.

E. & B.	Ellis & Blackburn (Queen's Bench)	1852-1858
E. & E.	Ellis & Ellis (Queen's Bench)	1858-1861
Ed.	Eden (Chancery)	1757-1767
Eq. Ca. A b.	Equity Cases Abridged	1667-1744
Exch.	Welsby, Hurlstone, & Gordon	1847-1856
Ex. D.	Law Reports, Exchequer Division	1875-1880

F.

F. Moo.	Francis Moore (King's Bench)	1512-1621
Fost. & Finl.	Foster & Fintason (Nisi Prius)	1858-1867
Freem. Cha. Ca.	Freeman (Chancery)	1660-1706
Freem. K. B.	Freeman (King's Bench)	1670-1704

G.

Giff.	Giffard (Chancery)	1857-1865
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H.

H. Bl.	Henry Blackstone (Common Pleas)	1788-1796
H. & C.	Hurlstone & Coltman (Exchequer)	1862-1865
H. L. C.	Clark (House of Lords)	1847-1866
H. & N.	Hurlstone & Norman (Exchequer)	1856-1861
Hob.	Hohart (King's Bench)	1603-1625

I.

Inst.	Coke's <i>Institutes</i>	
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J.

John.	Johnson (Chancery)	1859
John. & H. (or J. & H.)	Johnson & Hemming (Chancery)	1860-1862

K.

Keb.	Keble (King's Bench)	1661-1679
Keil.	Keilway (King's Bench)	1496-1531
K. & J.	Kay & Johnson (Chancery)	1854-1858

L.

L. J.	Law Journal Reports	1823-1831
L. J. (N. S.)	Law Journal Reports (New Series)	1832-1899
L. R. App. Ca.	Law Reports, Appeal Cases	1875-1890
L. R. C. P.	Law Reports, Common Pleas	1865-1875
L. R. Ch. App.	Law Reports, Chancery Appeals	1865-1875
L. R. Eq.	Law Reports, Equity	1865-1875
L. R. Exch.	Law Reports, Exchequer	1865-1875

ABBREVIATIONS.	FULL TITLE.	DATES.
L. R. H. L. C. ...	Law Reports, House of Lords Cases ...	1855-1875
L. R. P. & D. ...	Law Reports, Probate & Divorce ...	1865-1875
L. R. Q. B. ...	Law Reports, Queen's Bench ...	1865-1875
L. T. ...	Law Times Reports ...	1859-1899
Leon. ...	Leonard (King's Bench) ...	1540-1615
Litt. ...	Littleton (Common Bench & Exchequer) ...	1626-1631
Lutw. ...	Lutwyche (Common Pleas) ...	1682-1704

M.

Mac. & G. ...	Macnaghten & Gordon (Chancery) ...	1849-1851
Madd. ...	Maddock (Chancery) ...	1815-1822
Mer. ...	Merivale (Chancery) ...	1815-1817
Mod. ...	Modern Reports (King's Bench) ...	1669-1732
Moo. ...	Moore (King's Bench) ...	1512-1621
Moo. P. C. ...	Moore (Privy Council) ...	1836-1862
Moo. & P. ...	Moore & Payne (Common Pleas) ...	1828-1831
M. & S. (or Maule & S.)	Maule & Selwyn (King's Bench) ...	1813-1817
M. & W. ...	Meeson & Welsby (Exchequer) ...	1836-1847
Myl. & K. ...	Mylne & Keen (Chancery) ...	1832-1835

P.

P. ...	Law Reports, Probate ...	1891-1899
P. D. ...	Law Reports, Probate Division ...	1875-1890
Plowd. ...	Plowden's Commentaries (Queen's Bench) ...	1550-1580
Poph. ...	Popham (King's Bench) ...	1592-1627
Pre. Cha. ...	Finch (Chancery) ...	1689-1723
P. Wms. ...	Peere Williams (Chancery) ...	1695-1736

Q.

Q. B. ...	Adolphus & Ellis (New Series) ...	1841-1852
Q. B. D. ...	Law Reports, Queen's Bench Division ...	1875-1890

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Rot. Par. ...	Rotuli Parliamentorum ...	Edw. I-Hen. VII.
Russ. ...	Russell (Chancery) ...	1826-1829

S.

Salk. ...	Salkeld (King's Bench) ...	1689-1712
Sch. & Lef. ...	Schoales & Lefroy (Irish Chancery) ...	1802-1809
Shower, P. C. ...	Shower (Parliament) ...	1694-1699
Sid. ...	Siderfin (King's Bench) ...	1657-1670
Sim. ...	Simon (Chancery) ...	1826-1849
Sm. & G. ...	Smale & Giffard (Chancery) ...	1852-1857
Stra. ...	Strange (King's Bench) ...	1716-1749
Swanst. ...	Swanston (Chancery) ...	1818-1819
Sw. & Tr. ...	Swahey & Tristram (Probate & Divorce) ...	1858-1865

T.

T. R. ...	Durnford's & East's Term Reports (King's Bench) ...	1785-1800
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V.

ABBREVIATIONS.	FULL TITLE.	DATES.
Ventr.	Ventris (King's Bench)	1668-1691
Vern.	Vernon (Chancery)	1681-1720
Ves. Sr.	Vesey, Senior (Chancery)	1747-1756
Ves. Jr.	Vesey, Junior (Chancery)	1787-1816

W.

W. Bl.	Sir William Blackstone (King's Bench) ...	1746-1780
Wils.	Wilson (Chancery)	1818-1819
W. R.	Weekly Reporter	1853-1899

Y.

Y. B.	Year Books (ed. of 1679)	Edw. II-Hen. VIII.
Yelv.	Yelverton (King's Bench)	1603-1613

ERRATA.

Page		<i>For</i>	<i>read</i>
55.	N. 6.	'1 Ir. R. 1'	'1 Ir. R. 91.'
66.	N. 6.	'' '66a'	'' '664.'
79.	L. 26.	'' 'from'	'' 'prior to.'
81.	N. 9.	'' 'Aston'	'' 'Arton.'
82.	N. 4 and 6.	'' '802'	'' '820.'
100.	N. 4.	'' '1889'	'' '1890.'
103.	N. 3. l. 3.	'' 'Flowden' (twice)	'' 'Dyer.'
113.	N. 1.	'' 'Lenson'	'' 'Leuson.'
115.	N. 3.	'' 'Flowd.'	'' 'Dyer.'
116.	Footline 2.	'' '1655'	'' '1632.'
118.	N. 1.	'' '99'	'' '98.'
122.	N. 2 and 5.	'' '1002'	'' '1005.'
126.	N. 3.	'' '3 Atk.'	'' '1 Atk.'
127.	N. 3.	'' '1620'	'' '1626.'
136.	N. 6. l. 7.	'' '1711'	'' '1781.'
181.	N. 3.	'' '405'	'' '485.'
260.	N. 4.	'' '55'	'' '15.'
376.	N. 1.	'' '1683'	'' '1681.'
382.	N. 1.	'' '1680'	'' '1683.'
401.	L. 5 from foot.	'' { 'only substantial ex-	'' 'important point
		'' { ception to the rule'	'' to remember.'
401.	N. 2.	'' 'Padget'	'' 'Padgett.'
408.	N. 2.	'' 'Mar.'	'' 'Mac.'

