

**A TREATISE ON JOINT
RIGHTS AND LIABILITIES:
INCLUDING THOSE WHICH
ARE JOINT AND SEVERAL**

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A Treatise on Joint Rights and Liabilities: Including Those Which Are Joint and Several by
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A TREATISE

ON

Joint Rights and Liabilities :

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JOINT AND SEVERAL.

BY

WALTER HUSSEY GRIFFITH

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PREFACE.

OF the many difficulties which surround the student of English law those to which Joint Rights and Liabilities give rise are not among the most serious or important; but they are among the most puzzling. As examples of them we may instance the following:—

“A. and B. and each of them agree with J. S.” This is a joint and several contract (p. 6). But “J. S. agrees with A. and B., and each of them” is anything rather than a joint and several contract (p. 8). Joint and several contractors are each and all liable (p. 35); so are joint wrong doers (p. 56); yet a mere judgment against one of the former is no bar (p. 36), while a mere judgment against one of the latter is a complete bar, to an action against the others (p. 57). One of two joint tenants or tenants in common can bring an action for trespass and recover damages according to his interest (p. 62); but suing alone on a covenant to repair the same party would infallibly have been non-suited in former days (pp. 11, 15). How will he fare now? We cannot say for certain. But there is no doubt whatever that if a covenantee sues one of two covenantors he may recover judgment for the whole

debt or damages unless the defendant takes a particular form of objection (p. 26).

Perhaps these instances are enough without alluding to the complications which arise on the death of one of several co-contractors, complications which the Court of Chancery has certainly not simplified.

Of those who are confronted with these difficulties some seek their explanation from the practising barrister in whose chambers they are reading, or the lecturer whose classes they attend; a few, more independent, have recourse to the library of their Inn, where they search the Index of Subjects for the heading Joint Rights, or Joint Liabilities, and find nothing. Like all our law, the law on this subject is to be found somewhere, but where? To gather it from the reports is a task so lengthy and laborious as to be out of the question for the student. As yet he knows too little of Williams' Saunders, and perhaps less of Platt on Covenants, or Dicey on Parties to Actions, and even in these works he will not find the subject dealt with as a whole. Such being the position of the student, if this small treatise should serve him as a guide in his investigations the object of its author will be attained.

A number of the cases cited are no doubt of considerable antiquity. For this, however, it is not thought necessary to offer any apology, because in old days the minds of lawyers were more familiar with the subject, more keenly alive to the difficulties, and more accurately analytical in

the solution of them than they are now, for the reason that formerly the consequences of a mistake were much more serious than they are at present. When the non-joinder of plaintiffs was matter for demurrer, while non-joinder of defendants was not, pleaders realized more clearly what is meant by a promise to two persons on the one hand and a promise by two persons on the other than they do now under the *regime* of Rules of Supreme Court, Order XVI., which in dealing with both cases in the same words, seems to imply that the two are analogous. It is not uninteresting to note the phases through which the law on the subject has passed: the first in which contractors and contractees were treated alike in being sued and suing; the second when "the clean ploughshare of dividing mind" separated the one from the other; and the last when easy going methods of pleading do already in part, and may yet entirely, plunge the subject back into that state of confusion in which we first find it.

W. H. G.