

**A CONCISE VIEW OF THE LAW  
RELATING TO THE PRIORITY  
OF INCUMBRANCES AND OF  
OTHER RIGHTS IN PROPERTY**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649527281

A Concise View of the Law Relating to the Priority of Incumbrances and of Other Rights in Property by William George Robinson

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**WILLIAM GEORGE ROBINSON**

**A CONCISE VIEW OF THE LAW  
RELATING TO THE PRIORITY  
OF INCUMBRANCES AND OF  
OTHER RIGHTS IN PROPERTY**



A CONCISE VIEW OF THE LAW  
RELATING TO THE  
PRIORITY OF INCUMBRANCES  
AND OF OTHER  
RIGHTS IN PROPERTY.

BY  
WILLIAM GEORGE ROBINSON, M.A.,  
OF OXFORD COLLEGE, OXFORD, AND OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.



LONDON:  
STEVENS & HAYNES,  
Law Publishers,  
BELL YARD, TEMPLE BAR.

1873.

LONDON:  
STEVENS AND RICHARDSON, PRINTERS, 5, GREAT QUEEN STREET,  
LINCOLN'S INN FIELDS, W.C.

## P R E F A C E.

---

THE aim of this little book is to simplify, by stating in a systematic form, a complicated and rather abstruse branch of Equity Jurisprudence. The doctrines which relate to and control the priority of incumbrances and of other rights in property form, perhaps, the most intricate portion of treatises upon the Law of Sale or of Mortgage. Their difficulty is attributable to a variety of distinctions and refinements, the creation for the most part of accumulated decisions, and not readily accessible in the multitude of reported cases which in effect constitute the law applicable to the subject.

The plan of the following pages may be said to consist in the statement of a few governing Rules, explained by judicial exposition of the principle upon which they rest, and illustrated by such of the reported cases as appeared to be the simplest,

and therefore the best, examples of their application. The subordinate conditions or incidents of a rule are sometimes independently considered and illustrated in a similar way, and the notice of each rule concludes with an enumeration of any exceptions or practical restrictions which judicial authority or legislative enactment may have imposed upon it.

Until the prospects of codification are more definitely settled than they are at present, some method of this kind (a) will perhaps be found to be the best available means of simplifying the voluminous complications of case law. The adoption by text-writers of comprehensive and formally stated propositions may at least serve to reduce within the compass of industry, by bringing within the range of broad and definite principles, the vast and ever expanding bulk of that portion of our law which, being purely the product of decisions, is both created and developed by the tacit legislation of the Courts. There does not seem to be any reason why text-books should not thus be made to answer many of the purposes of a Digest, and at

(a) In principle the method is the same as that of Mr. Vaughan Hawkins' *Treatise upon the Construction of Wills*. It is unnecessary to add that this little book does not in any other respect seek comparison with that valuable work.



the same time to facilitate the formation by diminishing the labour and difficulty of a Code.

In the present publication an attempt has been made to illustrate, however slightly and imperfectly, these views. For the purpose of such illustration the law of priority appeared to offer a good field for experiment (so to speak), but it must be admitted that with the establishment of a compulsory system of registration in the transfer of land, and the introduction of registered charges, the subject, (so far as it is concerned with land,) may be expected to gradually lose much of its former importance and intricacy. Upon the other hand, it is reasonable to conjecture that many of the broad principles by which the priority of adverse rights in land have been hitherto determined will survive and continue to be applicable to the altered conditions of the law of title to real property. However this may be, the possibility of an eventual change in this branch of the law, long anticipated but hitherto practically deferred, need not affect the consideration of the methods by which case law generally may, through an improvement of its form, be made easier and more accessible.

As regards the authorities, the writer has endeavoured to select those cases which seemed to be most relevant, and to be commonly cited in practice, but this slender volume has, of course, none of the exhaustiveness of a treatise. It is designed rather as a slight practical suggestion upon a subject which has a permanent interest—the simplification of the law.

6, NEW SQUARE, LINCOLN'S INN,

June, 1873.

## CONTENTS.

INTRODUCTORY . . . . .	PAGES 1—4
------------------------	--------------

---

### PART I.

#### PRIORITY OF TITLE TO LAND.

---

##### CHAPTER I.

OF THE PRIORITY DERIVED FROM THE LEGAL ESTATE IN LAND . . . . .	5—17
1. Where the legal estate is acquired contemporaneously with payment of consideration . . . . .	5—10
2. Where the legal estate is acquired after payment of consideration . . . . .	10—17

##### CHAPTER II.

OF PRIORITY AS BETWEEN EQUITABLE INTERESTS IN LAND . . . . .	18—23
1. The grantee of an equity takes subject to the equities affecting it . . . . .	18—19
2. Of priority from precedence in time, " <i>qui prior est tempore potior est jure</i> " . . . . .	19—23