

**A DIGEST OF THE  
ENGLISH LAW  
OF EASEMENTS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649037650

A Digest of the English Law of Easements by L. C. Innes

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)

**L. C. INNES**

**A DIGEST OF THE  
ENGLISH LAW  
OF EASEMENTS**



A DIGEST  
OF THE  
ENGLISH LAW OF EASEMENTS.

BY  
MR. JUSTICE INNES,  
ONE OF THE JUDGES OF HER MAJESTY'S HIGH COURT OF JUDICATURE, MADRAS.

SECOND EDITION.



LONDON:  
STEVENS AND SONS, 119, CHANCERY LANE,  
Law Publishers and Booksellers.  
1880.

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

## PREFACE TO SECOND EDITION.

---

THE first edition of this work was published in Madras early in March, 1878. The appreciation of it by members of the profession in India has induced me to proceed to a second edition in England. I have added an Index, which will facilitate reference to the several matters treated of, and have in other respects endeavoured to make the present edition an improvement upon the first.

L. C. INNES.

WANSTEAD, ESSEX.

*July, 1880.*





## PREFACE TO FIRST EDITION.

---

ON taking his seat as the Legal member of the Vice-regal Council, Mr. Whitley Stokes announced the intention of the Council to take in hand without delay the work of codification, in almost the entire remaining field of law in which codification has not yet been attempted. Among other subjects he mentioned that of Servitudes.

It occurred to me that in some respects as a guide and in others as the means of pointing out difficulties which, in framing an Indian Code, it would be well to avoid, the completion of a work which I had for some time had in hand—a Digest of the English Law of Easements, a branch of law which is included in the somewhat more comprehensive law of Servitudes—might prove useful as a preliminary step towards the preparation of a Chapter of the Indian Code on the subject.

I have omitted what are called customary Easements, as they are either not Easements properly so called, or,

if Easements, are so by prescription, and not by custom, and are properly classed as Easements by Prescription.

I have added a Section on Licenses, as is usual in treatises upon Easements. The subject is related to that of Easements, and each tends to throw light upon the other. Rights usually styled rights *ex jure naturæ* are also treated of, though they are not Easements, for a similar reason.

There is much in the English law that might be adopted without mischief or difficulty in India; as the law relating to Rights of Way, Support of Land or Buildings, Air and Light.

In regard to Rights of Water (with exception of such rights as are styled Rights *ex jure naturæ*, or as I prefer to call them, "Rights arising from situation independent of a right of Easement"), I certainly trust the Legislature will not think of adopting the English model. Rights *ex jure naturæ* are simple and natural, and are incompatible with an excessive or unfair use of the object. But Easements in water are of a highly artificial and complex character, and in a country the welfare of which is, in many provinces, so dependent upon a fair and even distribution of water, are liable to result, I fear, in great injury to whole communities. The evidence of a few false witnesses in a Court of first instance may often become the basis of a decision as to individual rights which the Appellate Court may not be in a position to reverse; and the level of the water

hitherto flowing to many a village may thus become so lowered as to deprive large tracts of land of the accustomed overflow, to the ruin of the landholders who are dependent upon it for their livelihood.

The irrigation officers in the Madras Presidency are well aware of the mischievous effects arising from the establishment of these rights, but are powerless in the face of the decisions of the Courts of Law, and must recognize and tolerate them however great may be their inconvenience.

I am not one of those who persistently deny the existence of property in the soil in India to any but the sovereign and the statutory proprietors. On the contrary, I hold views in regard to the rights of the ryots in the soil which may seem inconsistent with what I am about to advocate. If, as I believe, they have by the ancient custom of the country an emphyteutic title, which the British Government has sometimes recognized, more frequently ignored, but never expressly denied, it may seem unreasonable that with so permanent an interest in the soil they should not be allowed to acquire, over neighbouring tenements, such Rights in Water in the nature of Easements as have grown up in England.

But in India, I think, the well-being of most communities points to the necessity of great economy in water, and of the regulation of its distribution in the interests of all, in proportions as far as possible adjusted