

BOOK REVIEW

PRIVATE PROPERTY AND ABUSE OF RIGHTS IN VICTORIAN ENGLAND. By Michael Taggart (Oxford University Press, 2002. Hardback, 235 pages, £45.50)

Almost everyone who has been a student of the common law at one time or another will have come across the case of *Bradford v Pickles*, finally resolved on appeal to the House of Lords at [1895] AC 587. It is a great case, involving (as do all the great cases) interesting and memorable facts, and doctrinal issues complex and controversial enough to keep it a staple on the curricula of our law schools even a century after its decision. Principally, it is regarded as a decision on the law of tort, and is most usually taken as standing for the principle that it is not unlawful for a holder of property rights to exercise those rights maliciously or to the detriment of others.

Professor Taggart's book (the latest volume in the Oxford Studies in Modern Legal History series) is work entirely devoted to an exploration of this great case. Describing itself in its subtitle as "*The Story of Edward Pickles and the Bradford Water Supply*" (my emphasis), it is just that: a compelling and interesting narrative, explaining the factual and legal background to the case, and unfolding the plot as it journeys through successive appeal courts. Moreover, Taggart continues where the law reports end, explaining and analysing the impact of their Lordships' decision on the main protagonists, and thus offering some reminder that legal rulings take effect in the real world.

The book in effect falls into two parts. In the first of these we find an exploration both of the litigation itself and its historical background. A short prologue describes succinctly the facts relevant to all stages of the litigation, and gives the ultimate outcome of two successive appeals, the first by the defendant, Edward Pickles, and the second by the plaintiff Corporation of Bradford. Pickles owned land adjoining a spring (Many Wells Spring) which for forty years had been used by the Corporation to supply water to the town of Bradford. The water came to the spring from underneath Pickles' land, percolating through undefined channels. In the early 1890's Pickles announced a plan to drain his land of the water, in an attempt to mine the land for flagstone. As Taggart records, "The plan gave the appearance of a contrivance to force the Corporation to pay a premium for Pickles' land or a water right over it" (page 1). Whether or not this was so was never authoritatively settled, the House of Lords holding that the question of motive was ultimately irrelevant. No use of property which would be legal if due to a proper motive could become illegal because it was prompted by an improper or malicious motive. In short, Pickles won the legal battle.

In an effort to place this legal victory in context, the early chapters offer something of a Victorian history. Chapter one explores the development of Bradford's water supply. A product of the industrial revolution, Taggart affirms the possibility that at one time Bradford was the fastest growing city in the world (page 6), adding historical significance to the legal wrangling in

Pickles. As an account of nineteenth century Britain it is eminently readable, and quite immaculately referenced, evidencing a degree of scholarship which suggests the author's deep fascination with his subject. The impression left in the reader is that no archive has been left undisturbed in Taggart's attempt to get to grips with this case, and his account is all the stronger for it.

Chapter two continues in the same vein, offering some detail on the importance of mining to the Yorkshire community, before descending to the more particular matter of the resources at Pickles' East Many Wells Farm. Very intriguing here is Taggart's record of a similar dispute occurring between Edward's father, Holmes Pickles, and the Corporation some 30 years before the eponymous litigation. The dispute was settled, the Corporation paying £1,000 for a 25-yard wide strip of lower-bed coal in an effort to cease disruption that was being caused to a natural underground reservoir by Holmes Pickles' coal mining activities (pages 23-27). The reader speculates with Taggart on the Corporation's apparent change of policy between 1860 and 1890, as the plot began to thicken in this legal affair. Moreover, this is but one example of the kind of real-life historical insight that permeates the book. Everywhere Taggart's work is laden with anecdotes and tangential asides (like the curiosity that leading counsel for each party were both members of Lincoln's Inn called to the bar on the same day: page 49), the latter commonly appearing in the elaborate and extremely detailed footnotes. The main protagonists are described as though they were characters in a novel, no detail being spared in the elaboration of almost every principal, from Bradford's "formidable" Town Clerk, William McGowen, to Pickles' solicitor, George Burr. The result is a compelling exposition that seems to breathe life into the short text that appears in the law reports (the decision in the House of Lords is reported in only 18 pages).

A third chapter deals in depth with each stage of the litigation in Pickles before making way for part two of the book. Here we find four chapters (and a short epilogue), each of them separately devoted to one of the doctrinal issues raised in the case. So there are chapters on statutory interpretation and the development of water law (chapters four and five respectively), and a brief epilogue touching on the public/private law divide (Taggart here reveals that the birth of his interest in Pickles was due to "the light it would shed on . . . the implications of (re)privatisation of public utilities, such as water companies.") But the heart of the book seems to be in chapters six and seven. The first of these concerns the failure of the English common law to adopt a doctrine similar to the doctrines of abuse of rights found in some Continental systems, according to which the exercise of a legal right is not an absolute privilege, and may be restricted or limited in circumstances where such exercise causes (or is calculated to cause) harm. Taggart remains neutral as to whether the common law should develop such a doctrine (page 165), but offers a short yet sophisticated account of reasons which may explain its absence. Most of these are historical and cover a wide range, including the presence in the nineteenth century of a growing, and fuller body of common law, a Diceyan suspicion of all things Continental, and the prevalence of positivism in legal theory (pages 155-166). Also interesting by way of explanation is Taggart's perception of the declining influence of the rules of equity in Victorian England, notwithstanding the Judicature Act of 1873 which expressly gave them priority over conflicting rules of common law (pages 152-155). Chapter seven explores the related question of the role

of malice in the law of torts, specifically the degree to which a malicious motive for the exercise of a common law right can have any bearing upon the legitimacy in law of that exercise.

All in all this is a superb monograph, and in truth a review of this length does scant justice to the wealth of interest and detail awaiting the reader. The footnotes alone merit careful study, and will provide stimulus for anyone interested in the history or development of the common law, though most especially for those pursuing a theoretical study in either torts or common law property. Perhaps a small negative is that there is some repetition in places. To be fair, the author in part concedes this, observing of the several chapters in the latter part of the book that each depends to some extent on some knowledge of what is contained in the rest (page 3). On this view then, repetition is defended “for the convenience of those who will dip into this book rather than read the chapters sequentially” (page 3). In truth such repetition as occurs is probably slightly more than is necessary to meet this goal: it is also evident, for example, in reading the early chapters. But still, this is the most minor of criticisms. The recaps are certainly sufficient enough to allow the later chapters to be treated as stand-alone discourses on their subject, and unobtrusive enough to be nothing like a hindrance to an avid reader progressing from cover to cover.

This is by no means the first time that the Pickles case has acquired the attention of the modern legal historian. In 1994, A.W.B. Simpson, General Editor of the Oxford series in which Taggart’s work now appears, delivered a lecture to the Selden Society in which he investigated both the background to the case and the practical consequences of the House of Lords’ decision. The present work, however, is one which in Professor Simpson’s own words presents “a far more sophisticated study, both of [the case’s] historical context, and of its legal and social significance” (page vii). It is a work of undoubted scholarship, yet one which remains readable and engaging. For these reasons it should satisfy the most demanding of private lawyers, whilst at the same time remaining interesting and accessible to anyone with even a passing interest in the history of the common law.

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