CONTENTS.

LECTURE I.

EARLY FORMS OF LIABILITY.

Object of the Book, 1. — Origin of Legal Procedure in the Composition for Vengeance, 2-4. — Subject of this Lecture, Indirect Liability for Servants, Animals, &c., 5. — A. Mosaic Law, 7. — B. Greek Law, 7, 8. — C. Roman Law: (a.) Noxæ deditio, 8-15; (b.) Personal Liability, 15-17. — D. Early German Law, 17, 18. — E. Anglo-Saxon Law, 18, 19. — F. The Common Law: (a.) Master and Servant, 19, 20; (b.) Animals, 20-24; (c.) Inanimate Things, — Deodand, 24, 25; the Ship and the Admiralty Law, 25-34. — G. Conclusion, 34-38.

LECTURE II.

THE CRIMINAL LAW.

A. Vengeance: (a.) As Source of the Criminal Law, 39, 40; (b.) As one Object still, 40, 41.—B. Theories of Punishment: (a.) Reformation, 42; (b.) Retribution, 42, 43, 45; (c.) Prevention, 43-48.—C. Preventive Theory shows Penal Liability not measured by actual Blameworthiness alone, but by Nonconformity to external Standard based on what would be wrong in average Man, 49-51.—D. Murder, 51-60; Malice—Knowledge of Facts making the Conduct dangerous, 52-56; Exceptional Cases where Man must know at his Peril, 58, 59; Murder and Manslaughter, 59, 60.—E. Manslaughter, 59-62; Provocation, 61, 62.—F. Malicious Mischief, why actual Malice, 62-64.—G. Arson, 64, 65.—H. Attempts, 65-70; Intent as making a harmful Result probable from Act otherwise innocent, 66-68; Limit to this, 68-70.—I. Larceny is Attempt to deprive Man of his Property permanently, 70-74.—K. Burglary, 74; Conclusion, 75, 76.

LECTURE III.

TORTS.—TRESPASS AND NEGLIGENCE.

A. Introduction, 77-79; The Question, 79; Two Theories: (a.) Liability confined to moral Shortcoming, 79, 81, 82; (b.) A Man acts at his Peril, 80, 82; Neither sound. - B. Latter Theory considered: (a.) Argument for, 83-88; a. Analogy, 83, 84; \(\beta\). Theory, 84; y. Pleading, 84, 85; S. Precedent, 85-88. (b.) Argument against, 89-107; a. Analogy, 90-94; \(\beta\). Principle and Policy, 94-96; y. Trespasses upon Land, &c., 96-100; S. Pleading, 100-102; e. Precedent, 102-107. — C. Negligence not judged by personal or moral Standard, 107. — D. Liability for unintended Harm is determined by what would be Blameworthy in average Man, 108-110; i. e. by Standard external to the Individual, which tends to become more specific, and to take form of concrete Rules of Conduct, 110-113; (a.) Process of Specification illustrated, 113-119; a. Statute, 113, 114; \(\beta\). Decisions, 113-115; \(\gamma\). Policy apart from Negligence, Rylands v. Fletcher, 115-117; S. Cattle, 116-119; (b.) Bailment, 120; (c.) "Evidence of Negligence," 120-126; (d.) Function of Jury, 123-129.

LECTURE IV.

FRAUD, MALICE, AND INTENT. -THE THEORY OF TORTS.

Preliminaries, 130–132. — A. Moral Element in Wrongs called Intentional: (a.) Deceit, 132–138; (b.) Slander, 138–140; (c.) Malicious Prosecution, 140–142; (d.) Conspiracy, 143; (e.) Trover, 143, 144. — B. Moral Standards adopted only so far as to give Opportunity to avoid inflicting Harm, 144; (a.) Some Harms may be done, 144, 145; Risk of others must be taken, 145, 146; but most Cases between these Extremes, 146; (b.) Common Ground of Liability in Tort: Knowledge of Circumstances making Conduct dangerous, 146–149; (c.) What these Circumstances are, determined by Experience, 147, 149, 150; (d.) Function of the Jury, 150–152. — C. Examples in which the Circumstances which must be known have been worked out: Trespass to Property, 153; Fierce Animals, 154–156; Cattle, &c., 156–158; Slander, &c., 158, 159. — D. Proximity of Choice to Harm complained of, 160, 161. — E. Summary of Law of Torts, 161–163.

LECTURE V.

THE BAILEE AT COMMON LAW.

Law of Bailment is Test of Theory of Possession, 164, 165. — A. Early German Law, 165-167. - B. English Law after the Conquest closely resembles it, 167-180: (a.) Remedy for converted Chattels is possessory, 168, 169; (b.) Transfer by Bailee binds Owner, 169, 170; (c.) Inverted Explanation of Bailee's Right of Action, 170, 171; (d.) True Explanation that our Law regards him as Possessor, 171-175; (e.) Bailee answerable to Bailor if Goods are stolen, 175-180. - C. Common Carriers. Survival of ancient Law, 180-205: (a.) Under Elizabeth, Carriers like other Bailees, 181, 182; (b.) Change from Detinue to Case introduces Allegation of Assumpsit or Common Calling, even where Ground of Liability is Bailment, 183–187; (c.) The Custom of the Realm, 187, 188; (d.) The Cases examined from Southcote's Case (A. D. 1601) to Coggs v. Bernard (A. D. 1703), 181, 182, 185, 189-199; (Effect of Assumpsit and Common Calling, 195;) (e.) Bailee's Liability diminished one Way, 195, 197, 198; increased another, 199-201; (f.) Public Enemy and the Act of God, 201, 202; (q.) Meaning of Lord Holt's View as to Public Calling, 203; (h.) Later Changes; (i.) Conclusion, 202, 204, 205.

LECTURE VI.

POSSESSION AND OWNERSHIP.

A. Why protected, 206-213. — B. Fact or Right? 213-215. — C. Analysis of, 215-235: (a.) Power over Object, 216-218; (b.) Intent, 218-234: a. Criteria of Roman Law rejected, 218, 219; β. Intent to exclude, 219-226; γ. Servants. Digression as to Agents, 226-234; (c.) Power as to Third Persons, 234, 235. — D. Continuance of possessory Rights, 235-238. — E. Possession of Rights, 238-241. — F. Consequences of Possession (i. e. Nature of possessory Rights), 241-244. — G. Ownership, 244-246.

LECTURE VII.

CONTRACT. — I. HISTORY.

A. Early Forms of Contract, 247-252: (a.) Promissory Oath, 247; (b.) Suretyship and Bail, 247-251; (c.) Debt; (d.) Origin of Action,

251, 252. — B. Consideration, 253–270: (a.) Origin in Debt, 253, 254; (b.) Started from Procedure, and the Nature of the Cases for which the Secta or Witness Proof was provided, 254–263; (c.) Magna Charta required Secta for Parol Debts, and thus forbade Suits for such Debts except within the traditional Limits of the Secta, 263–265; (d.) Quid pro quo, Doctrine invented to fit existing Limits of Parol Debts, but applied to other Parol Contracts and in Equity, 265–270. — C. Covenants, 271–273. — D. Assumpsit, 274–288: (a.) Transit from Tort to Contract on Ground of Defendant's having intermeddled, 274–284; (b.) New Doctrine of Consideration, 284–287; (c.) Later Influence of Assumpsit on the substantive Law, 287, 288.

LECTURE VIII.

CONTRACT. — II. ELEMENTS.

A. Consideration, 289–297: (a.) What sufficient, 290–293; (b.) Consideration and Promise must be reciprocal conventional Inducement each for other, 293–295; (c.) Executed Consideration, Request, 295–297.—B. Promise, 297: (a.) Assurance that certain State of Things shall come to pass, 297–299; (b.) Hence Contract is taking Risk of uncertain State of Things, and the Rule of Damages depends on the Risk taken, 299–303; (c.) Acceptance, 303, 304.—C. Bilateral Contract, 304–307: (a.) Promises as Consideration; Wager on past Events, 304, 305; (b.) Contract by Letter, 305–307.

LECTURE IX.

CONTRACT. - III. VOID AND VOIDABLE.

- Void Contracts, 308-315. A. When Contract void, some primary Element wanting: (a.) Party, 308, 309; (b.) Parties say different Things, 309, 310; (c.) Language contradictory in Essentials, 310-313. B. In general, Contract not void on Grounds outside the Contract itself; if Elements of Contract present, Contract is made, 313-315.
- Voidable Contracts, 315-339. A. Ground of Avoidance is a Condition: (a.) If Condition attached to Contract's coming into being, no Contract, 315, 316; (b.) Conditions precedent and subsequent, 316-318; (c.) Distinction between Conditions and Limitations upon the Scope of a Promise, 318-322. B. Representations outside

Contracts, 322-326: (a.) No implied Condition that they are True, but only that no Fraud, 322-326; (b.) Fraud, what? 325; (c.) Goes only to Motives; Materiality, 326.—C. Conditions as to making good the Representations or Undertakings contained in the Contract, 327-339: (a.) Regarding present Facts; Warranties; Void and Voidable, 327-333; (b.) Promises, 333-339.

LECTURE X.

SUCCESSIONS. - I. AFTER DEATH. - II. INTER VIVOS.

- The Problem, How are Rights or Obligations transferred, when the Facts from which they spring cannot be True of the Transferee (i. e. when the Situation of Fact is not a continuing one capable of Possession)? It is by a fictitious Identification of the Transferee with his Transferror. I. Successions after Death.—A. The Executor, 345: (a.) The Roman Heir, 344; (b.) The Executor a universal Successor, "represents Person of Testator," 344, 345.—B. The Heir, 346-352: (a.) At first universal, then singular Successor, "represents Person of Ancestor," 346-350; (b.) This Persona is the Estate, 350-352.
- II. Successions Inter Vivos. A. Standing in Seller's Shoes not a necessary Incident of Conveyance, 353-355.—B. Early German and Anglo-Saxon Law; Alienability extended by Analogy of Inheritance, 355-360.—C. Roman Law; Consequences of Identification of Heir with Ancestor extended to Buyer and Seller, to acquire prescriptive Right, 360-366.—D. English Law. Prescription, 366-369.—E. Devise, 369, 370.

LECTURE XI.

SUCCESSIONS. - II. INTER VIVOS.

A. Warranty, 371-380: (a.) Direct Benefit of, extended to Assign by Fiction that Assign was quasi Heres, 372-377; (b.) Analogy of, extended to modern Covenants for Title, 378-380.—B. Easement, 381-386: (a.) Roman Law, 382-385; (b.) English Law, 385, 386, (393, 394, 396, 397, 399, 402, 404, 405); (c.) The Type of Rights which pass, irrespective of Succession, upon a conflicting Principle, 386, 387.—C. Rents, 388-391; (a.) When Parcel of a Manor, like Easement, 388-390; (b.) But contractual Remedies for, only

passed by Succession, 390, 391.—D. Prescriptive Rights analogous to Contract, which followed Law of Easement, 392-394.— E. Land bound to Warranty, 394, 395.—F. Necessary Meeting and Conflict between Principle of B, C, D, and E, and that of A (Succession), illustrated by the Cases, 395-399.—G. Modern Law; (a.) The Confusion as to "Covenants running with the Land" due to losing Sight of the Conflict, and to the Attempt to apply both Principles, 400, 404; (b.) Results, 404, 406.—H. Other Cases of Successions: Uses, and Trusts, 407-409.