

A PRACTICAL TREATISE ON THE LAW OF TRUSTS AND TRUSTEES (1837)

Thomas Lewin (1805-1877)

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The author:

Thomas Lewin was born at Ifield in Sussex (England) on 19 April 1805, the fifth son of an Anglican clergyman, and died at his home in South Kensington in London on 5 January 1877. He was educated at Merchant Taylors' School in London and then at Worcester College, Oxford, where he matriculated on 29 November 1823. In 1825 he obtained a scholarship at Trinity College. After a first class in classics in 1827 he graduated BA in 1828 and MA in 1831. Though he contemplated a career in the church, when he left Oxford he was admitted at Lincoln's Inn, and was called to the bar in 1833.

Lewin began his professional career as an equity draftsman and built up a large conveyancing and chancery practice. Having assisted Lord St Leonards in drafting his measures for chancery reform, and as a mark of the regard in which he was held, Lewin was appointed one of the six conveyancing counsel to the reformed Court of Chancery in 1852, holding the position until his death.

Although he was highly regarded as a property lawyer, Lewin enthusiastically pursued his other great interest, the history of the New Testament. He travelled to the Middle East to pursue his enquiries. He was an active member of the Society of Antiquaries and played a central role in contemporary debates as to the place of Caesar's landing in Britain, and the topography of Jerusalem. A man described as kind and congenial, he married at the age of 60, but had no children.

Works:

Of his works in the field of scriptural history, the most famous were *The Life and Epistles of St Paul* (London, 1851, 2 vols; 2nd edn, 2 vols, 1874; 3rd edn, 1875); *The Siege of Jerusalem by Titus* (London, 1863); *Fasti Sacri, or a Key to the Chronology of the New Testament* (London, 1865).

The book:

Lewin first published *A Practical Treatise on the Law of Trusts and Trustees* in English in 1837 (London, A. Maxwell; Dublin, Milliken & Son. lxxvi, 789 pages, 8vo). It was circulated primarily in England and Ireland, and two years later an American edition was published (Philadelphia, New York, J.S. Littell; Halsted and Voorhies, 1839). Lewin had five more editions published before his death (1842, 1857, 1861, 1867, 1875), and thereafter other editors, including his nephew, Frederick Lewin, took over the task. Further editions appeared in 1879, 1885, 1891, 1898, 1904, 1911, 1928, 1939, 1950, 1964, 2000, 2009. The current edition (2013) is the 19th. All were published in London by Alexander Maxwell, then William Maxwell & Son, then Sweet & Maxwell.

Lewin's *Treatise* was his only legal work and from the outset was one of the great textbooks in English law. He adopted a threefold division of the law, addressing the trust, the trustee and the beneficiary respectively. His first section began with the history of the trust, and then proceeded to define and classify trusts and explain their creation. In the second section he addressed the office of trustee, explaining the duties of both private and charitable trustees and their powers. In the third and final section on the beneficiary, he

examined the position of the cestui que trust, his interest and his powers in ensuring the trustees performed their duty.

Lewin's *Treatise* became established as a standard work on the law of trusts and trustees because it was timely, accurate and comprehensive. First published in the year of Queen Victoria's accession to the throne, it was timely because it appeared at a critical and dynamic period for this branch of law. Over the nineteenth century the trust was transformed from a conveyancing device used primarily by the landowning classes to a common feature of Victorian life and an integral part of that society. It became a widespread and necessary arrangement to cope with the challenges of a new industrial age, providing a home for the wealth of the new middle classes, essential support for wives and children and enabling the preservation, transmission and, increasingly, the management, of varied financial assets. This new invigoration and changed function of the trust brought it, and the powers, duties and liabilities of trusteeship, within the mainstream of middle class life and, increasingly with the growth in professional trusteeship, of general legal practice. So much real and personal property was in the hands of trustees that difficult points of law and practice arose daily. The legal profession needed a clear and comprehensive statement of the law relating to the substance and administration of trusts. Lewin provided precisely this.

The *Treatise* was accurate. Lewin himself was an experienced and able lawyer. He practised in trusts law on a daily basis, was involved at the very centre of the formal litigation processes of equity and trusts, and contributed to chancery reform at the highest levels. Although Lewin included no preface to his work, he dedicated it to Sir Edward Sugden, who later became Lord St Leonards LC, and the book was clearly understood as intended for use by the legal profession, a character it retained. In this tradition, it was based entirely on the formal legal sources acceptable in court – the statutes and reports of cases in the superior courts relating to trusts. Lewin was prolific in his use of these, and meticulous in providing case law authorities for the points he made. Indeed, he was the first, and only, author to attempt a complete citation of authority in this field, and that remained a feature of the work into the modern era.

Above all, the great strength of the *Treatise* was that it was comprehensive and the material rigorously and lucidly arranged. It covered every aspect of the law of trusts. It was in this that Lewin distinguished himself from other legal writers. His was the first work dedicated to an analytical treatment of the whole of the law of trusts and trustees. Until then trusts were included only as a part of works on the general principles of Equity, such as Spence's *Equitable Jurisdiction of the Court of Chancery* (1846-49), or as an adjunct to uses and dominated by their landholding nature, as in Gilbert (1741) and Sanders (1791) on *Uses and Trusts* or again only in their charitable form as in the works of Shelford (1836), Tudor Owen Davies (1854) and Finlason (1853). Even Hill's *Practical Treatise on the Law relating to Trustees* (1845) had a narrow scope, being limited to the law relating to trustees rather than trusts, and other smaller works were for the use either of solicitors only, or lay trustees. Furthermore, where earlier works were regarded as chaotic in their arrangement of the material, Lewin's threefold structure addressing the trust, the trustee and the beneficiary, and logically arranged within those sections, supported by a copious index, made the *Treatise* accessible and useful to both branches of the legal profession. Contemporary commentators welcomed its publication, praising Lewin's novel attempt to reduce this notoriously complex and important branch of English law into 'order and connexion', though taking issue with certain of his interpretations of the law, notably his treatment of the contentious issue of the separate estates of married women.

The *Treatise* immediately found its place as the standard work on the law of trusts and trustees primarily for the profession, but also providing the pattern for the teaching of the law of trusts in Law Schools for the twentieth century, with undergraduate lecture courses and textbooks almost invariably following his arrangement of the subject. It became

an authoritative and definitive text which was frequently cited in court. A mark of the high regard in which it was held was its endurance: the work is now in its nineteenth edition. Later editions retained Lewin's essential structure and character, though the development of the law required changes of substance and emphasis to ensure the work remained current. Obsolete law was removed, as were areas of specialised academic interest such as the history of the trust in the 16th edition. New issues were introduced, such as a fourth section on pleadings and practice in the 3rd edition, and the impact of tax matters in the 15th edition. The use of legal periodicals as a source – something unknown in the early nineteenth century – was introduced in the 14th edition. As legislation in the field of trusts and its accompanying judicial interpretation grew, so necessarily did the size of the *Treatise*. While Lewin's first edition consisted of 789 pages, by the turn of the new century it had doubled in size. The *Treatise* remains a classic work of English law. It has been described as 'the practitioner's definitive textbook on trusts...the text of record for trusts lawyers.'

Bibliography :

- 'Review of the First Edition of Thomas Lewin's Practical Treatise on the Law of Trusts and Trustees, 2 *Monthly Law Magazine and Political Review* 574-81 (1838)
- Browne-Wilkinson, N. 'Foreword' to the 17th edition, *Lewin on Trusts* (London, 2000)
- Mowbray, J et al., 'Thomas Lewin' in 17th edition, *Lewin on Trusts* (London, 2000)
- Walker, R. 'Publication Review,' 117 *Law Quarterly Review* 683-86 (2001)
- Stebbing, C. *The Private Trustee in Victorian England* (Cambridge, 2002)

CHANTAL STEBBINGS