



ADDENDA.

- Page 13, line 4 from bottom, read 45 for 145.
- Page 16, line 5 from bottom, read 3 after Geo.
- Page 45, line 7 from bottom, for 4 Edw. read 8 Edw.
- Page 76, last line, for 4 & 5 Will. IV. c. 76, read 5 & 6 Will. IV. c. 69.
- Page 129, line 14 from bottom, for "issue of such precept" read "completion of the audit."
- Page 133, line 4 from bottom, for Surrey read North Staffordshire.
- Page 142, line 8 from top, for 40 & 41 read 41 & 42.
- " line 11 from bottom, for 37 & 38 read 38 & 39.
- Page 145, line 13 from top, for c. 31 read c. 51.
- Page 160, line 5 from top, for 103 read 38.
- Page 165, last line, for 271 read 171.
- Page 174, line 9 from bottom, for 4 & 5 read 5 & 6.
- Page 188, line 14 from bottom, for 12 read 6.
- " line 3 from bottom, for 43 read 23.
- Page 189, line 4 from bottom, for 12 read 6.
- Page 190, line 6 from bottom, for 11 & 12 read 12 & 13.
- " last line, for Geo. 4 read Geo. 3.
- Page 191, lines 2, 3, *delete* 11 & 12 Vict. c. 14, s. 7.
- Page 207, line 2 from bottom, *add* "but the clerk of the peace, at the request of the party applying for the case, must transmit it to the Crown Office, *Heppeswell v. Castleford*, Q. B. D., Nov. 25th, 1880. In civil cases, such as appeals against rates, the Queen's Bench Division can give costs under the Judicature Act, *R. v. Alderbury Union*, Q. B. D., Nov. 25th, 1880; but they cannot do so in purely criminal cases, *R. v. Baxendale*, Q. B. D., Nov. 25th, 1880, and hence in such cases the *certiorari* should still be employed.
- Page 219, line 10 from bottom, after *Fdw.* read 4.
- Page 232, line 3 from bottom, for s. 64, read s. 65.
- " line 2 from bottom, for c. 13, s. 2, read c. 59, s. 1.
- Page 236, for VIII. read IX.
- Page 241, for IX. read X.
- Page 263, last line, for 116 read 115.

1. A HIGHWAY is a perpetual right of passage in the sovereign, for himself and his subjects over another's land: being therefore a mere easement, it confers no right to a participation in the profits of the corporeal property upon which it is imposed.

The word "highway" is used in popular language to denote the roadway itself, an error into which they who draft statutes have unfortunately not infrequently fallen (a); but a long and unbroken series of authorities establish the fact that a highway, like any other way, is a mere easement conveying no profit or share in the soil to the public (b), whose right is one of passage only (c), though the motive which induces them to use it is immaterial; it may be to get from one place to another, it may be for recreation. The above definition will include bridges and navigable rivers, — which are highways subject to the like common law principles as roads, — and also a *cul-de-sac*, which, it is now clear, may be a highway, though in each case it is a question of fact whether it is so or not, and the absence of a thoroughfare is an important element in

(a) *Coverdale v. Charlton*, L. R., *Newington v. Jacobs*, L. R., 7 Q. B. 4 Q. B. D. 104; 13 Geo. 3, c. 78. 47; *Rollis v. St. George's, Southwark*, L. R., 14 Ch. D. 485.

(b) *Y. B. 8 Edw. 4, 9; Goodlake v. Alker*, 1 Burr. 133; *Lade v. Shepherds*, 2 Str. 1004; *St. Mary*,

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considering this question (*d*). On principle, a highway is a right unlimited in duration, for the public is a body that can never cease to exist; neither can they, being a continually changing body, existing in past present and future, release by any act of their own the rights which all and each of them possess; so, on authority, "there can be no dedication of a way to the public for a limited time, certain or uncertain. If dedicated at all, it must be dedicated in perpetuity" (*e*). This presupposes that it is a right of passage for all the public, or, in the words of the old authorities, "in the sovereign for himself and his subjects;" upon the principle that the sovereign is the one visible magistrate of the realm to whom the public have delegated all their power and rights with regard to the execution of the laws,—the *paterfamilias*, invested with public rights for the benefit of his subjects, and the guardian of those rights against any who would invade upon them (*f*). Not only is there indirect authority for holding that a highway is a right for all the public,—*i. e.* the remedy for its infringement being criminal in form (*g*) and the necessity of alleging the way to be common to all the public (*h*),—but there is direct authority that "there cannot be a dedication to a limited portion of the public" (*i*). There are, it is true, certain *dicta* that there may be a partial dedication (*k*), but they were unnecessary for the decision of the case in which they were used, and cannot now be held correct (*l*).

The legislature, of course, can create a highway limited in duration—that is to say, can enact that a road shall be made, and that to it shall attach all or such of the qualities of an ordinary highway as it directs. During the continuance of the act, there can be no implied grant of a highway by the owner, and therefore on the repeal or expiry of the statute by efflux of time the road would cease to be a public road (*m*).

2. Viewed in regard to the extent and mode of user the genus Highway contains three and only three species,

- (*d*) *Bateman v. Black*, 18 Q. B. 827; *Bernardsey v. Brown*, L. R., 1 Eq. 204.
 870; 17 Jur. 388.
 (*e*) *Daves v. Hawkins*, 8 C. B., 848.
 (*f*) See Bl. Com. Of the Royal Prerogative.
 (*g*) *R. v. Saintiff*, 6 Mod. 255.
 (*h*) *Throver's case*, 1 Ventris, 208; 3 Keble, 28.
 (*i*) *Peole v. Huskisson*, 11 M. & W. 827; *Bernardsey v. Brown*, L. R., 1 Eq. 204.
 (*k*) Per Bayley and Holroyd, JJ., *Stafford v. Coyne*, 7 B. & C. 257.
 (*l*) See per Littledale, J.; *S. C.*, 5 L. J., K. B. 288; and Wellbel. Highways, 53, 54.
 (*m*) *R. v. Winter*, 8 B. & C. 785; *R. v. Mellor*, 1 B. & Ad. 32; *R. v. Thomas*, 7 E. & B. 399.

viz., "Footway," "Horseway," "Cartway," the first being a way for all persons on foot, the second for all persons on foot or with beasts of burden, the third for all persons on foot, or with beasts of burden, or with carts or carriages.

Highway sometimes is used in a yet more restricted though more correct sense to denote a public carriageway or even a main arterial road as distinguished from a parish road; but this restricted sense is incorrect, for any way, whether a carriage horse or footway, which is open for public passage is a highway (*n*), and as such must be kept in repair. In the case of a private way, the extent of the right must be measured by the user proved (*o*), but it is otherwise in the case of a highway. A footway is a way for all human beings, a horseway for all animals, a cartway for all carriages (*p*); and the larger right includes the lesser, *i. e.* a cartway is also a way for foot passengers (*q*) and animals: and horseway, or pack and prime way, or drift way, as Lord Coke calls it, is also a footway (*r*).

3. In order to secure the efficient repair of the highways, England is divided into highway areas, each of which is subject to a separate highway authority empowered to raise money over the whole area for the purpose of maintaining the highways within its limits: such areas are of three kinds, (1) parochial highway areas; (2) highway districts; (3) urban sanitary districts.

A highway, like anything else, was by the common law to be repaired by those who had the use of it (*s*), *i. e.* by the public, each common law parish performing its share of the common burden by repairing the highways within its limits (*t*), and this share was discharged by the personal labour of the occupiers and their servants,

- (*n*) See per Id. Holt, C. J., *R. v. Hatfield*, Cas. temp. Hardw. 315. *v. Saintiff*, Holt, 129; 6 Mod. 255; (2) See per Id. Denman, C. J., *Boss v. Litton*, 5 C. & P. 407.
 (*o*) Co. Litt. 56 a; *Fleta*, iv. 27; *Bracton*, iv. f. 232.
 (*p*) *Bailard v. Dyson*, 1 Taunt. 279; *Higham v. Rabett*, 5 Bing., N. C. 622; *Cooling v. Higginson*, 4 M. & W. 245; *Dave v. Heathcote*, 26 L. J., Ex. 164.
 (*q*) *R. v. Leake*, 5 B. & Ad. at p. 482.
 (*r*) See per Lord Hardwicke, *R.*