

A.R. Buck\*

***PRIVATE PROPERTY AND ABUSE OF RIGHTS IN  
VICTORIAN ENGLAND: THE STORY OF EDWARD  
PICKLES AND THE BRADFORD WATER SUPPLY***

**By Michael Taggart  
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260pp  
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**M**ost lawyers are aware of the decision in *Bradford v Pickles*,<sup>1</sup> although fewer are aware of the context of the case. In the late nineteenth century the English town of Bradford was a rapidly growing industrial centre. The town's water supply came from a spring, the Many Wells Spring, seven miles from the town centre. The land on which the spring was located was owned by the Corporation of Bradford, the municipal authority responsible for the town's water supply. Adjoining the Many Wells spring was land owned by one Edward Pickles. The spring water, and hence the source of the town's water supply, came from underneath Pickles' farm. In the early 1890s Pickles began constructing a series of shafts and tunnels on his land that had the effect of diverting the supply of water running into the Many Wells Spring. The town's water supply was threatened. Pickles claimed that this construction was part of a plan to mine for flagstone on his land. Pickles then approached the Corporation and offered to sell his land for a handsome sum. The Corporation felt that Pickles was holding them to ransom and refused to purchase. The Corporation, believing that either statute or common law protected them from such malicious action, went to court, seeking an injunction against Pickles to stop him digging. The case made its way to the House of Lords, where the Law Lords, in their infinite wisdom, ruled in favour of Pickles. In so doing, the Law Lords established a number of principles in what has become a leading case.

First, they established that use rights in underground percolating water were absolute. Second, and of great import, they refused to qualify that absolutism with an exception for malice. What this has meant is that that under the English common law, as a result of the decision in *Bradford v Pickles*, a property owner can exercise his or her property rights even if those rights are exercised in a malicious fashion and to the detriment of others or the public interest. The decision in

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\* BA (UNSW), MA (Newcastle), PhD (Newcastle), Grad Dip Juris (Sydney); Senior Lecturer, Division of Law, Macquarie University

<sup>1</sup> *The Mayor, Aldermen and Burgesses of the Borough of Bradford v Edward Pickles* [1895] AC 587.

*Bradford v Pickles* raised a number of questions: Should property owners have such unfettered rights? Should the law provide protection to the rights of the property owner even when that person acts in a malicious way and to the detriment of their neighbours? Are there only property rights, or are there property responsibilities? These are the questions with which Michael Taggart's fascinating book is concerned.

However, it needs to be asked whether a case such as *Bradford v Pickles* warrants the detailed historical investigation Taggart accords it. Quite often one encounters extremely interesting cases, full of passion and drama, which have little importance to the law, and conversely, leading cases which are extremely important to our understanding of the law, yet which are of only limited intrinsic interest. It may be that, ultimately, *Bradford v Pickles* is not of sufficient interest to bear the burden of such detailed historical investigation. Part of the problem that confronts the reader is that Edward Pickles himself remains a shadowy figure throughout the book. Taggart admits that we know next to nothing about Pickles the man. While this is not a problem in the second half of the book, where Taggart deals with the legal implications of the case, it does place an unbearable burden on the history of the case which comprises the first half of the book. As an insight into Victorian society and morals the story of Edward Pickles is undoubtedly interesting. But is it interesting enough to sustain 100 pages of historical explication? Does its intrinsic interest dominate over a myriad of other personal stories that are revealed in other cases? Perhaps not. Taggart also works at a disadvantage in telling the story of Edward Pickles, given that Brian Simpson, in his inimitable and entertaining style, brought the greed and the vindictiveness of *Bradford v Pickles* to life in a Selden Society lecture.<sup>2</sup> Does Taggart substantially add to Simpson's vignette? Well, yes he does, as we are treated to an exhaustive examination of the remaining records and archives.

There is much of interest in Taggart's unfolding of the legal arguments of counsel, and in particular, of the ideology of the bench in the House of Lords decision. When the Lord Chancellor, Lord Halsbury, stated that 'if it [Pickles' construction] was a lawful act ... he had a right to do it ... I see not reason why he should not insist on [the Company] purchasing his interest',<sup>3</sup> it helps to know, as Taggart points out, that Halsbury was an arch-Conservative, and supporter of the virulently anti-Socialist organisation, the Liberty and Property Defence League. Indeed, here perhaps, is a dimension of Taggart's attempt to place the case in historical context that might have been developed further. In many respects the case can be read as a template of political ideology in late Victorian England. Here was a case fought out between a municipal organisation and an individual property owner over the

<sup>2</sup> A W B Simpson, 'Victorian Law and the Industrial Spirit': Selden Society Lecture delivered in the Old Hall of Lincoln's Inn, 13 July 1994 (1995).

<sup>3</sup> *Bradford v Pickles* (Halsbury LC) 594.

relative weight of community interests compared to the rights of private property. The litigation occurred at a time when the debate over Socialism animated the country. Bradford, indeed, was the birthplace of the Independent Labour Party at precisely the same time as this litigation. These facts are in the book, to be sure, but are often relegated to footnotes and might have been expanded, particularly given their relevance to the question, implicit in the book as a whole, of the relationship between the rights and responsibilities of private property.

The second half of the book treats three separate, but related issues in depth: riparian rights, the abuse of rights doctrine and the relationship between malice and tort law. There is a wealth of material that Taggart has brought together on these issues, and the book provides a particularly good introduction to these issues. The question of why English common law, for instance, lacks an abuse of rights doctrine with respect to property ownership and the implications of its absence are given fascinating and detailed treatment and he brings together the extant literature on the subject in a well-written and concise fashion. Similarly, his chapters on tort law and riparian rights are both wide-ranging and penetrating. In the chapter on malice and tort law, one particularly interesting question raised is why *Bradford v Pickles* was decided the way it was when, in the Lochner-era United States, a leading case such as *Tuttle v Buck*<sup>4</sup> which helped establish the prima facie tort doctrine, was decided with regard to ‘the social needs of the community’. This sort of comparative analysis might well bear more investigation, and it is a testament to Taggart’s book that he raises in the readers’ minds such opportunities for future study.

To return to the issue of the book’s structure, one unfortunate consequence of dividing the book into an historical narrative of the case, followed by discrete studies of legal issues associated with the decision, is that there is some unfortunate duplication and repetition. There is, for example, almost an entire page of text, including a lengthy quotation from Lord Wensleydale on the use of underground water in Chapter 3 that is duplicated almost word for word in Chapter 5. This is an unfortunate editorial oversight in what is otherwise a splendidly readable book.

Finally, what conclusions does Taggart draw from his detailed study of *Bradford v Pickles* about the important normative issues of the balance between the rights and responsibilities of property, or the relationship between the public and the private in property law? If ever there was a case that cried out for a lengthy reflection on these issues it must be *Bradford v Pickles*. And yet, surprisingly perhaps, Taggart is strangely muted and circumspect in the short Epilogue in which these issues are dealt with. He briefly summarises what others, including Carol Rose<sup>5</sup> and Kevin

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<sup>4</sup> *Tuttle v Buck* (1909) 107 Minn. 145; 119 N.W. 946 (Supreme Court of Minnesota).

<sup>5</sup> C Rose, ‘Property as the Keystone Right’ (1996) 71 *Notre Dame Law Review* 329.

and Susan Gray<sup>6</sup> have had to say on the wider normative issues, and yet, perhaps there was the opportunity for a deeper engagement with these issues than the author provides us with. Of course, for those issues, there are a number of writers to turn to, including Joseph William Singer<sup>7</sup> and Margaret Jane Radin.<sup>8</sup> The ultimate success of Taggart's book is that it raises the importance of the philosophical and political dimensions of the idea of property in law. Newly aware of those dimensions at the conclusion of the book, the reader is motivated to explore further the passions that lie embedded in the subject of property. And that is no small feat for a book on the legal rights associated with underground percolating water.

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<sup>6</sup> K Gray and S Gray, 'Private Property and Public Propriety', in Janet McLean (ed), *Property and the Constitution* (1999) 11.

<sup>7</sup> J W Singer, *Entitlement: The Paradoxes of Property* (2000).

<sup>8</sup> M J Radin, *Reinterpreting Property* (1993).