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EDITION

FALCON
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Sir J. Morgan



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Fisher and Lightwood's Law of Mortgage

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Fisher and Lightwood's Law of Mortgage

Preface

This 13th edition of Fisher and Lightwood is the third to which members of Falcon Chambers have contributed. It sees a number of developments which enhance the work. The chapter on Charging Orders has been expanded to reflect its continuing practical importance; there has been a complete revision of the chapter on Consumer Credit to take account of the Consumer Credit Act 2006 and the important, and often referred to, chapters on mortgagee's remedies have all been subject to a degree of restructuring which undoubtedly improve the text. Also, there have, as usual, been many new cases since the last edition, all of which have been incorporated.

I am particularly pleased that Sir Paul Morgan has found the time, notwithstanding the demands made upon him by his judicial duties, to continue to contribute to the book. It benefits greatly from his breadth of knowledge and incisive mind.

I and the other contributors are grateful for the hard work of the editorial staff at LexisNexis. I think that on this particular occasion we, unusually, managed to keep to the production deadlines.

As with previous editions, I would encourage readers to contact me directly, or indirectly through the publishers, with any suggested improvements or comments upon the text. I wish to thank all those who provided comments on the last edition; we have attempted to include those of interest in this new edition where appropriate.

Finally, many thanks must go to Edward Peters for his wonderful piece of research into the life of William Richard Fisher. He has produced for this edition a short, but fine, biography of the original author of this work. I am sure that you will find it of interest and I recommend it to you.

The law is stated as at 1 July 2010.

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William Richard Fisher

(1824–1888)

William Richard Fisher was born on 14 August 1824, into a wealthy and influential Great Yarmouth family. His father, John Goate Fisher - after a brief commission in the Norfolk militia - practised as a solicitor; other members of the family were prominent merchants, brewers, and bankers; an uncle became an admiral. The Fishers were enthusiastic supporters of the local Walpole and Townshend Whig interest, and held the mayoralty of the borough eleven times between 1767 and 1820; William's father had been mayor in 1820, and his grandfather in 1802 and 1811. His childhood home, a fine seventeenth-century merchant's house, still stands at 25 South Quay. William's elder brother, John, became vicar of Hessenford, Cornwall; his younger brother, Charles, died in infancy.

William's mother, Charlotte, was the daughter of the town minister, the Reverend Richard Turner. Her brothers included a quartet of successful lawyers - Sir George Turner, a Lord Justice of Appeal, Sir Charles Turner, Senior Master of the Queen's Bench, Richard Turner, Judge and Magistrate of Agra, and Francis Turner, sometime Treasurer of Inner Temple - as well as Richard Turner, Fellow of Gonville and Caius College, Cambridge, and William Turner, Envoy Extraordinary to Canada.

W R Fisher was admitted to Lincoln's Inn in 1848, and called to the Bar in 1851. After a pupillage with his uncle Francis Turner, an eminent conveyancing counsel of 7 New Square, he took up practice as an equity draftsman and conveyancer. After two decades in Chambers at 2 New Square, he spent three years at 5 New Square, before moving to Sir George Gilbert Scott's newly rebuilt 9 Old Square in 1876.

On 11 August 1852, William married Amelia Mary, , the younger daughter of Richard Woodhouse, Esq, of Gloucester Place, Portman Square. William had been called to the bar alongside her brother. In due course William and Amelia built a house at Harrow-on-the-Hill, and had five sons and three daughters; their eldest son, William Woodhouse Fisher, became a colonial judge.

At the age of 32, in 1856, W R Fisher published, to a host of enthusiastic reviews, *'The Law of Mortgage, as applied to the Redemption, Foreclosure and Sale in Equity of Incumbered Property, with the Law of the Priority of Incumbrancers'*; 770 pages, price 25 shillings. The first American edition followed in 1857.

The *Justice of the Peace* commented: 'Mr Fisher ... has evidently come to a sound conclusion in thinking that he could throw additional light on a branch of the law which, though incidentally treated of by others, was yet far from

exhausted by any of them. The ability displayed in accomplishing that task shows him to be not only right in his conclusion, but fully capable of acting upon it. Mr Fisher [has] by the exercise of sound judgment, and no small amount of learning and research, reduced the various elements from the chaos into which they have hitherto been plunged, to order and consistency.' 'All who are concerned in mortgage transactions ... will nowhere find so much, so careful, and such recent information as Mr Fisher has collected', concluded the *Law Times*. 'The Author's discrimination is equalled only by his love of the learning on the subject' trilled the *Morning Herald*. 'We heartily recommend it to the profession', enthused the *Solicitors Journal*. 'Already we hear that Mr Fisher's volume is favourably spoken of by competent judges', noted the *Legal Observer*. 'We believe Mr Fisher can confidently look forward to its recognition as a standard authority', predicted the *Legalian*.

The work was a great success, and three further editions of '*The Law of Mortgage*' followed in his lifetime, in 1868, 1876 and 1884.

W R Fisher was a keen proponent of the abortive Law Digest Commission – which from 1867–1870 inquired into the desirability and practicability of producing a comprehensive English civil code, based upon existing statute and case law – considering it 'a necessary step for the complete fusion of law and equity'. In 1870, as the project stalled, he published a pamphlet, '*A Letter to the Rt Hon the Lord Chancellor concerning Digests and Codes*', in which he calculated the amount of work which would be required to produce a civil code by reference to the labours which had been involved in producing his own '*Law of Mortgage*', and, fortified with quotes from Bacon, Bentham, and Charles Dickens, expressed the hope that 'our present scattered laws may, within a reasonable time, be brought into such a form as to be, if less simple than might be desired, concise, easy of reference, and a credit, instead of a reproach, to the country'.

He was a key figure in the mammoth Epping Forest litigation in the 1860s and 1870s, which, in a great series of suits and arbitrations, pitted the rights of villagers and commoners, supported by preservationists and the City of London, against numerous landowners who wished to enclose and develop, and ultimately resulted in 6,000 acres of the former Royal Forest being conserved as public open space (see, for example, *Willingdale v Maitland* LR 3 Eq 103; *Commissioners of Sewers v Glasse* LR 7 Ch 456; *Glasse v Commissioners of Sewers* LR 19 Eq 134). As junior counsel to Mr (later Mr Justice) Manisty, QC, Mr (later Lord Justice) Fry, QC, and Mr Joshua Williams, QC, it fell to him to 'study an immense mass of ancient and modern Forest documents' extending back before the Conquest, advise the City on the origin and nature of the ancient Forest rights, and how they might best advance their cause, and to supervise the gathering of a stupendous body of evidence.

In 1887, he published an exhaustive treatise on the subject, which serves as a lasting memorial of his work on the case: '*The Forest of Essex: its History, Laws, Administration and Ancient Customes, and the Wild Deer which lived in it*'. He greatly regretted that the ancient right of the villagers of Loughton to collect firewood from the Forest had not been saved, since it 'was of great value

to the poor inhabitants, and as a relic of antiquity was not less worthy of preservation than Queen Elizabeth's Lodge or Ambresbury Banks'.

W R Fisher retired to Guildford, Surrey, where he died on 17 November 1888, aged 65. His obituarist in the *Law Journal* remarked that, although he had 'a considerable practice as an equity draftsman and conveyancer, [he] is best known as the author of "*Fisher on Mortgages*" ... which had the merit, singular as books grow larger and weaker, of growing less and still being more effective'.

Edward Peters
Falcon Chambers

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