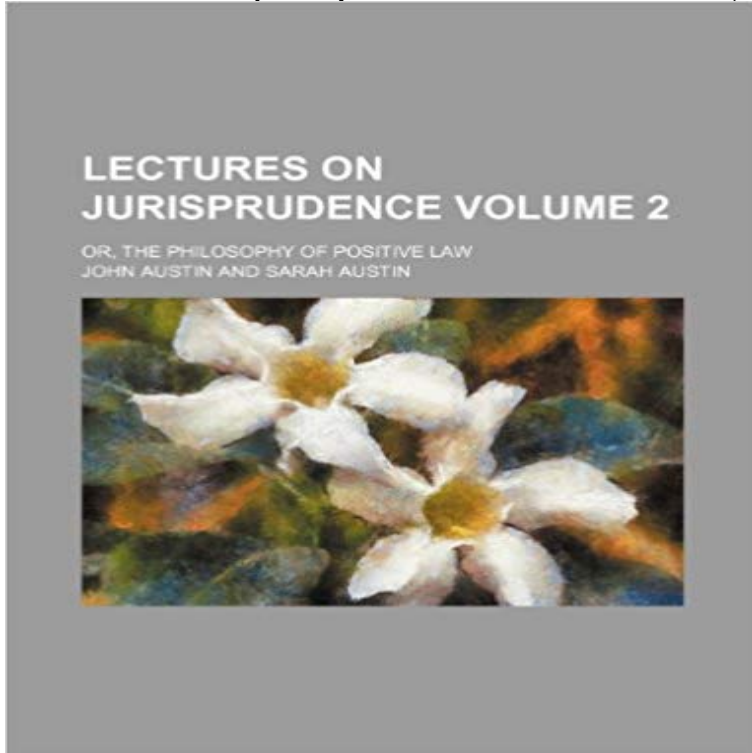


Lectures on jurisprudence Volume 2 ; or, The philosophy of positive law



This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1873 Excerpt: ...happen to be combined with a right to an act, against the owner: e. g. a right to have a way repaired by the owner. Quaere, Whether every servitus be not jus in personam against the owner or other occupant, anu jus in rem against the rest of the world?40 Mackeldey, vol. ii. pp. 78, 88. Blaekstone, vol. ii. p. 36 (Note 15). Thibaut, Versuche, vol. i. p. 27. See Table II. Note 3, B, a, b, pott. Quaere, Whether a negative servitude be jus in rem? Xlix An affirmative servitude may clearly avail against any, JJ?1 and may be violated by any. E. g. A stranger to the soil servitude may violate a right of common, by putting his cattle on the commonable land?41 And in the case of a negative servitude, it is possible for a stranger (e. g. a trespasser) to do the act which would prevent the enjoyment of the servitude: e. g. to build up, or otherwise obstruct, ancient lights. In the case, however, of a negative servitude, it is less likely that a stranger should disturb; because the disturbance would not be an act of user. y I apprehend that a negative servitude is usually brought within the category of jura in rem thus: it avails adversus i quemcumque possessorem; i. e. with or without title from the actual or preceding owner. Now as against an occupant without title, it could not be the result of a contract: for he is not privy to any contract of the present or any preceding owner. Still, however, it might arise from a quasi-contract: i. e. from the mere fact of his occupancy. It would seem that a duty to do (which must correlate with jus in personam) may attach upon the occupant by praescription. Though the occupancy, without title from the owner, may be an injury against the owner, it may not be per se an injury against the party

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