



Private International Law and the Retrospective Operation of Statutes; A Treatise on the Conflict of Laws and the Limits of Their Operation in Respect

Friedrich Karl Von Savigny

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1880 edition. Excerpt: ... Sect. LVIL--(§ 400.) B. EXISTENCE OF RIGHTS.--EQUITABLE

CONSIDERATIONS. I now revert to the question above reserved as to the justice and equity of the class of laws under consideration (p. 419). It has been shown that these laws, at least in the most numerous and most important cases, cannot possibly be understood except as affecting vested rights, since they either annihilate the legal institutions themselves, and therefore the legal relations subject to them (a), or at least essentially modify them, in either case without respect to the will of the parties interested. It is possible, while admitting this, to add to the admission the plausible objection, that just for this reason such laws must be regarded as utterly unjust and inadmissible. Those who make this objection evidently proceed on the assumption, that every violation of an acquired right, without the assent of the person interested, is simply impossible from the standpoint of moral right, and they regard this impossibility as a supreme and absolute principle. But this assumption cannot be admitted for the following reasons:-- In the first place, because it is incompatible with the general nature and origin of law. Law has its root in the common consciousness of the nation. This is, on the one hand, entirely different from the easily and quickly changing, the accidental and momentary consciousness of the individual man; but, on the other hand, it is subject to the law of progressive development, and cannot therefore be conceived as fixed and immovable (&). Hence we cannot possibly admit for any single epoch the power of throwing a spell and exercising a domination over every future age by its own sense of right. Some examples will make this clear. Throughout all...

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