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"Legal" and "Equitable" Interests in Land Under the English Legislation of 1925, by Merrill I. Schnebly

Paul L. Sayre
Indiana University School of Law

"Legal" and "Equitable" Interests in Land Under the English Legislation of 1925 by Merrill I. Schnebly. Harvard Law Review. December, 1926.

This is an article of 43 pages which covers a broad subject in a most careful and condensed way. It is inevitable, however, that the author

should consider the legislation in detail if his discussion is to be adequate. Professor Schnebly quite rightfully feels that he has not space to discuss the historical development of the legal ideas which culminate in the legislation generally known as "Lord Birkenhead's Reform." Professor Schnebly says this term should be applied to the legislation of 1922 but Duncan Campbell Lee of the Middle Temple in his article in the American Bar Association Journal for August, 1926, says that this term is generally applicable to all the property legislation that was begun by Lord Birkenhead in 1919 and culminating with the passage of the acts in 1925. It seems clear that the legislation was intended as a unit but that, in keeping with the usual English practice of caution and avoidance of sudden changes, Lord Birkenhead proposed that his final results should be accomplished through a series of laws extending over a period of years. Professor Schnebly points out that the three serious difficulties which English conveyancers were anxious to overcome were: (a) The obstruction to clear titles caused by vested interests of ownership that were evidenced by instruments executed sometimes centuries ago without any immediate indicia of title; (b) the fact that so much land was held in tenancy in common where the tenants in common of small tracts might be as many as one hundred or more for a single tract; and (c) the large amount of land held by equitable title in view of the rule of law in most cases that the purchaser of a legal title takes subject to the equitable title. The law of real property has sought to avoid the real difficulty by destroying legal interests and creating equitable interests in their place. Thus the transfer of legal interests became less obstructive and the equitable interests were especially provided for so as not to incumber the legal interests. As for the second defect tenancy in common has been abolished. It is no longer possible for one to convey the land to several persons in common ownership. The first difficulty is corrected in part by legislation which is designed to defeat the family settlement scheme that has been used in England for so long as a means of keeping the property in the same family. One would expect that the entailed estate would be entirely abolished but Professor Schnebly points out that this was retained since it is convenient where the heirs are minors and since the heirs may always destroy the entail by a conveyance when they reach their majority. Professor Schnebly points out that the evils of the family entail were really curtailed for the most part by the settled land act of 1882 in which it was provided for that the life tenant could sell the property free of the claims of the heirs so far as the land was concerned, but that the proceeds received from the sale were subject to the equitable claims of these heirs. The proceeds from the sale are paid into court or to trustees and held in trust on the same terms as the original settlement. In the case of mortgaged land, Professor Schnebly points out that the effect of the present legislation is to give both the mortgagor and the mortgagee a legal interest.

It is recognized that this brief account is not informative. The subject is so large that even Professor Schnebley's article, treating of the different points as briefly as possible, is hardly able to cover it in 43 pages. The importance of his exposition is all that we can call attention to here. It is suggested that nowhere else can we find a thorough exposition of the points covered.

PAUL L. SAYRE.

Indiana University School of Law.