4-1927

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

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the Obligation of Contracts" is treated by the Dartmouth College Case and two other cases remotely touching the subject and by three pages of text. The cases neither give the constitutional law pertaining to the "contract clause" nor even the subsequent historical development of the doctrine announced in the Dartmouth College Case. While some of this development can be found in the text material it is there treated in such a cursory way that it would have little meaning to anyone who had not studied the law elsewhere. The topic of "Due Process" is treated by three cases (one discussing the eight hour day, another, procedure, and the third, contempt) and by less than seven pages of text. How much about due process could be learned from these cases? Some elementary information about due process is given in the text, but the historical development of the subject is not given at all and the general principles touched upon are given only meagre treatment. These are fair samples of the treatment accorded other topics. In the opinion of the writer, such a book is not adapted for use in law schools. The method of the book is the "spoon-fed" method, but even for such a method there is too little in the spoon.

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This is an admirable little book for the beginning student in Law School. It is divided into eight chapters as follows: (1) The Courts; (2) Nature and Sources of Law; (3) Main Topics of the Law; (4) Procedure; (5) Forms of Action; (6) Pleadings; (7) How to Read and Abstract a Reported Case; (8) Repositories of the Law and Suggestions for Using Them. In addition to these eight chapters, there is a considerable appendix which gives detailed forms for the various common law writs and declarations in the common law actions. It will be noticed that the last five chapters deal directly with procedure or trial practice work. The first chapter also had its main interest in the understanding of the courts from the point of view of procedure or practice court work. The second and third chapters undertake some comment upon the substantive law. These chapters, however, are very brief and they purport to present these suggestions from the point of view of practice and procedure. Thus the "Nature and Sources of the Law" and the "Main Topics of the Law" are set forth so as to make the matter involved comprehensible for one who is working on a case for trial in court. When we bear in mind, therefore, that this book is an introduction to procedure more than an introduction to the substantive law we must recognize that it is of great value. The exposition of the forms of action at law and of pleading in equity together with the chapter "How to Read and Abstract a Reported Case" is set forth with unusual clarity and brevity. The comment upon the different repositories of the law is very helpful so far as the recent reports and digests go, but it is suggested that the comment upon the earlier sources of the law is inadequate. The suggestions for the use of encyclopedias and textbooks seem excellent.


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 indica 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 Schnebly'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.

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