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A. Barton Leach, Property Law Indicted

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PROPERTY LAW INDICATED. By W. Barton Leach. Lawrence: The University of Kansas Press. 1967. Pp. xiii, 94. \$2.25.

MR. DOOLEY ON MR. LEACH'S BOOK†

"Well sir," said Mr. Dooley, "I jus' finished readin' a book, Hin-nissy, that shood make thim loiyers and judges squirm a bit. Ye know I'm not a great wan f'r lithrathoor, havin' manny throubles iv me own, but I'm not prejudiced again' books. Whin a first-rate book comes along, I'm as quick as anny wan to say it isn't so bad, and this here book is a jim dandy.

"'Tis called *Property Law Indicted* an' was written be Barton Leach. He's a Havvard, ye know, an' a perfesser at that, same as Felix. But he's not near as verbose as Felix was to my way iv thinkin'.

"Ye see, it's this way, Hinnissy, menny iv our property laws kin be thraced back to th' likes iv Blackstone an' Kent an' John Chipman Gray. Now thim fellers were top-notch in their day, but that day has passed, says Mr. Leach, an' it's time to do a bit iv house-cleanin' an' git rid iv th' rools that make sinse no more.

"But it seems thim loiyers an' judges have bin singin' a toon that if 'twas good enough f'r Blackstone, Kent an' Gray, thin it's good enough f'r thim—an' that's bad, says Mr. Leach. Wan iv th' big obstacles to property reform seems to be th' notion that anny change iv th' law by joodicial decision is retroactiv' an' such action wud be fraught with gr-reat danger where land titles to property are involved. This is non-sinse, says Leach. Even th' United States Supreme Coort in *Johnson v. New Jersey*¹ jus' last year recognized that whin th' Coort revarses itself (as it does ivry now and thin) th' Coort may limit th' effect iv its action to future decisions.

"After dimonstratin' that th' obstacles to reform are built on sand, Mr. Leach gits down to specifics as to th' rools that need reformin'. He mentions Shelley's Rool, a creatoor iv th' feudal system an' how it makes it impossible to giv' land to th' airs iv a life tinnent be means iv a con-tingint remainder. 'Tis madness, says Leach. Th' Doctrine iv Worthier Title, another feudal rimnint, is equally demoralizin', says he. If a

† The dialect conversation between the Irish Mr. Dooley and his friend Hennessey as a means of commentary was originated by Mr. Finley Peter Dunne in 1893. Numerous collections of the Dooley Essays appeared before Mr. Dunne's death in 1936. For a recent selection of these essays see F. DUNNE, MR. DOOLEY ON IVRYTHING AND IVRYBODY (1963) (Selected and with an Introduction by Robert Hutchinson).

1. 384 U.S. 719 (1966).

grantor wants to transfer real property in trust to pay the income to himself for life and then to convey the property to his heirs by way of remainder, let him do it, says Mr. Leach. Even the great Cardozo, when given the chance to bury this root in New York, botched the job and only buried it a little bit.²

"Certain 'roots in construction' do not escape Leach's critical eye, Hinneberry. As he says, the cases involving problems in interpretation in gift instruments presents 'a nauseating collection in judicial garbage.'³ For instance, suppose H and W are married and W gives birth to a child who lives only one day. H's father left a trust in favor of his grandchild 'payable at age twenty-one.' This has been construed to create a vested interest subject to postponed enjoyment. Thus, the child who lived one day would take an interest which would pass to his heirs, H and W. Had the trust been a gift to the grandchild 'at twenty-one' it would have been construed as being contingent on reaching that age and the baby would have gotten nothing'. This distinction is silly, says Leach, and since the legislatures won't pay attention to such trifles, the courts must 'remove this garbage from the juridical gutter.'⁴

"Then the professor turns to the Root against Perpetuities, Hinneberry, and when Leach speaks about the Root, people pay attention. He doesn't advocate the abolition of the Root, but attacks several unwise doctrines related to it. He blasts the Fertile Octogenarian Root with its conclusive presumption that a woman of any age can bear children. He questions the All-or-Nothing Root which declares that if a gift to any potential member of a class is void, then the whole gift fails. Nor does the Might-It-Be Root make any sense to Leach when many gifts can be saved by waiting to see what actually happens.

"Oh, I tell you, Hinneberry, the professor builds a powerful case for reform. Here is a lawyer standing up and in a loud voice telling his own to clean house since they can't expect the legislatures to do it for them. He believes that lawyers have a professional duty to leave some 'footprints on the sands of time' so that at the end of their careers they can point to some new or more areas of the law in which they leave the law better than they found it.

"I'll wager, Hinneberry, that those fellows Blackstone, Kent and Gray are turning over in their graves at the thought of having their sacred doctrines tampered with by one in their own and a Harvard at that. But as

2. W. B. LEACH, PROPERTY LAW INDICTED 55 (1967) [hereinafter cited as LEACH].

3. LEACH 60.

4. LEACH 62.

Shakespeare says, Hinmissy, to thine own self be throe an' ye will not thin be false to ivry man.

"If ye read the book, Hinmissy, be shoor an' look at th' footnotes. Wan footnote pritty well sums up th' whole perpose iv th' book. It says:

Lives iv gr-reat men all remind us
That they're leadin' us astray,
So let's kick thim all behind us
An' proceed th' ither way."⁵

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5. LEACH 30, n.37.

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