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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' many 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-great 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 rimmint, 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 wans to thransfer real property in thrust to pay th' income to himself f'r life an' thin to convey th' property to his airs be way iv remainder, let him do it, says Mr. Leach. Even th' gr-reat Cardozo, whin given th' chance to bury this rool in New York, botched th' job an' only burried it a little bit.²

"Certain 'rools iv construction' do not escape Leach's critical eye, Hinnessy. As he says, th' cases involvin' problims iv interpretation iv gift instruments presents 'a nauseatin' collection iv joodicial garbage.'³ F'r instince, suppose H an' W are married an' W gives birth to a child who lives only wan day. H's father left a thrust in favor iv his grandchild 'payable at age twinty-wan.' This his bin consthrued to create a visted intrist subject to postponed enjoyment. Thus, th' child who lived wan day would take an' intrist which would pass to his airs, H and W. Had the thrust bin a gift to th' grandchild 'at twinty-wan' it would iv been conthrued as bein' contingint on reachin' that age an' th' baby would have gotten nothin'. This distinctshin is silly, says Leach, an' sinse th' legislators won't pay attintion to sich trifles, th' coorts must 'remove this garbage from th' juridical gutter.'⁴

"Thin th' perfesser turns to th' Rool against Perpetooities, Hinnessy, an' whin Leach speaks about th' Rool, people pay attintion. He doesn't advocate th' abolition iv th' Rool, but attacks sivrul unwise doctrins related to it. He blasts th' Fertil Octogenarian Rool with its concloosive phresumption that a woomin iv anny age can beget children. He questions th' All-or-Nothin' Rool which declares that if a gift to anny potential mimber iv a class is void, thin th' whole gift fails. Nor does th' Might-Iv-Been Rool make anny sinse to Leach whin many gifts can be saved be waitin' to see what actually happens.

"Oh, I tell ye, Hinnessy, th' perfesser builds a powerful case f'r reform. Here is a loiyer standin' up an' in a loud voice tellin' his own to clean house sinse they can't expect th' legislators to do it f'r thim. He believes that loiyers have a perffessional dooty to leave some 'footprints on th' sands iv time' so that at th' end iv their car-reers they can point to some wan or more areas iv th' law in which they leave th' law better thin they found it.

"I'll wager, Hinnessy, that those fellers Blackstone, Kent an' Gray are turnin' over in their gr-raves at th' though iv havin' their sacred doctrines tampered with be wan iv their own and a Havvard 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, Hinnessy, to thine own self be thru an' ye will not thin
be false to ivry man.

"If ye read the book, Hinnessy, 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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