



BOOK REVIEWS

The Law of Real Property, by R. E. Megarry, Q.C., M.A., LL.B., of Lincoln's Inn, Barrister-at-Law, and H. W. R. Wade, M.A., of Lincoln's Inn, Barrister-at-Law, 2nd ed. (Stevens & Sons Ltd., London, 1959), pp. i-lxxviii, 1-1077 Index 35pp. Price Rs. 56

Benjamin Cardozo in his '*Nature of the Judicial Process*' has observed: "The Law of real property is the readiest example of a field of law in which there can be no progress without history. No lawgiver meditating a Code of Laws conceived the system of feudal tenures. History built up the system and the law that went with it. Never by a process of logical deduction from the idea of abstract ownership could we distinguish the incidents of an estate in fee simple from those of an estate for life. Upon these a page of history is worth a volume of logic".

These observations of Cardozo are pregnant with instruction. The learned authors of the book under review must have borne the remarks in mind for they have devoted the major part of the work, namely, the first twelve chapters of the book, to the unravelling of the intricacies of tenures and elucidation of the incidents of estates in land. They have traced the historical landmarks in the evolutionary process that has eliminated all the feudal tenures with the exception of Socage now called Freehold. A summary of the present law of tenures is given at the end of chapter 2. Similar summaries stating the present law could have been conveniently given at the end of the chapters dealing with the various kinds of estates as well. The learned authors, however, seem to have considered it more conducive to facility of treatment to present a summary, *inter alia*, of the changes wrought by legislation in the subject of "Estates" in the last chapter which deals with the legislation of 1925.

The legislation of 1925, which contains the greater part of the modern law of property in England, aimed at the twin objectives of simplifying land law and facilitating the transfer of land. To achieve that aim copyholders and customary freeholds were enfranchised and turned into freeholds as from January 1, 1926; the estate tail, life estate and future estates were abolished at law; obsolete rules like the rule in *Shelley's* case have been abolished; and the law relating to co-ownership has been simplified by the abolition of legal tenancies in common. The book under review sets forth lucidly the repercussions



of the legislation of 1925 on the pre-existing law. The authors have observed at page 1065: "The paucity of litigation upon the Acts of 1925 is one of the clearest indications of their success". The consequent paucity of judicial exposition makes the task of an author all the more onerous and this onerous task has been competently performed by the learned authors.

Rights *in re aliena*—rent, charges, easements, *Profits a prendre* and mortgages are dealt with in chapters 13 and 14. Miscellaneous subjects such as *Disabilities*, Adverse possession, Limitation, and Registration are treated in chapters 15 to 17. The modern statutory restrictions on an owner's land to do as he wishes with his land are collected in a chapter entitled "Social control of land" and with this the treatment of the subject closes.

The learned authors have fully set forth in appropriate places the recommendations of the Land Reform Committee. In the 4th Report of the Committee (1956) proposals have been made for the radical reform of the Perpetuity Rule and these have been summarised on page 260 of the book in the chapter dealing with Future Estates. Wherever necessary the authors have given their own suggestions for the improvement of the law.

In the chapter on Mortgages the learned authors have considered the difficulties in settling priorities in the light of section 13(2) of the Land Charges Act and section 97 of the Law of Property Act which are apparently in conflict. At page 922 a hypothetical problem of two successive registrable mortgages in favour of X and Y is propounded. Assuming that X's mortgage (1st January) is completed earlier than Y's mortgage (2nd February) and also registered (3rd March) earlier than Y's mortgage (4th March), the learned authors have expressed their view that Y's mortgage would be entitled to priority on the ground that X's mortgage would be void under sec. 13(2) of the Land Charges Act as against Y since Y's mortgage was completed before the registration of X's mortgage. This view is in accord with that expressed by Dr. Cheshire in his *Modern Real Property* (5th Ed., p. 641). However, it is submitted that by parity of reasoning in such a case, Y's mortgage would be equally void as against X's mortgage since X's mortgage was completed before Y's mortgage was registered. In such a case under the ordinary rule that antecedence as to the time of creation is a ground of priority or under section 97 of the Law of Property Act, 1925, X's mortgage appears to be entitled to priority since both mortgages are registrable and neither is accompanied by a delivery of title deeds. That a solution different from what has been propounded by the



authors is possible has been acknowledged by them in their observation "How this problem would be resolved is uncertain" (p. 923). This illustrates the great care and circumspection exhibited by the authors in dealing with the complex problems presented by the legislation which was described in 1922 by Sir Leslie Scott, Attorney-General, when he introduced it in Parliament, as "the biggest bill ever introduced into Parliament". The book under review establishes the justification of the claim made by Sir Leslie Scott that the legislation in question "is not revolution but evolution... It is the slow and gradual product of half a century's work by legal reforms building on existing foundations".

In short, the book under review fully deserves all the praise that has been bestowed on it by the reviewers of the First Edition and bids fair to become a classic on the subject.

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Justice Oliver Wendell Holmes : The Shaping Years (1841-1870).

By Marke DeWolfe Howe : Published by the Belknap Press of Harvard University Press : pp. xii and 316 & index 12 pp. Price \$ 5-00

This volume has been written by Professor Marke DeWolfe Howe in partial fulfilment of an obligation undertaken by him at the request of Mr. John G. Palfrey, the executor of Mr. Justice Holmes, to prepare a biography of that great American judge. It is a fascinating study of the first twenty-nine years of the justice's life, appropriately named by the biographer as "The Shaping Years", a study which makes a valuable contribution to the understanding of the influences which moulded his mind and temperament during the formative years, a mind of extraordinary richness and a temperament of eternal youth which peep not only through his court opinions but also through his extra-judicial writings and letters. In his preface to this work, Mr. Howe tells us that the materials available for this period of the Justice's life are particularly rich as "during the civil war, as on his first European trip and in his first two years of practice he kept diaries which have survived and in which daily events are recorded".

Those who are conversant with Mr. Justice Holmes's judicial opinions and his letters will have noticed a strain of skepticism in his

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