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Simpson: An Introduction to the History of the Land Law

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RECENT BOOKS

AN INTRODUCTION TO THE HISTORY OF THE LAND LAW. By A. W. B. Simpson. New York: Oxford University Press. 1961. Pp. xx, 275. \$4.00.

As indicated in the preface, the author has written this book to replace Sir William Holdsworth's *Historical Introduction to the Land Law*. Not wishing to "duplicate the accounts" contained in other texts which tend to weave historical material into discussions of more modern law, the author has, as he says, concentrated "rather more on the early history of basic doctrines." In thus limiting the commingling of the old with the new, the book has the advantage of making available in a limited number of pages a great deal of valuable material concerning the fundamental origins of many property concepts. In this connection the author conjectures that the study of history should, for many students, come after the study of modern law. I shall say a word more about this at the close of this review.

The scope of the work is readily indicated by the table of contents. The author's topics, as they appear in order, are Tenure (pp. 1-23), The Real Actions (pp. 24-43), The Tenant's Interest in the Land (pp. 44-76), The Statute *De Donis* and the elaboration of the Doctrine of Estates (pp. 77-96), Incorporeal Things (pp. 97-111), Medieval Conveyancing (pp. 112-134), The Action of Ejectment and the Recognition of the Copyholder (pp. 135-162), Uses and the Statute (pp. 163-194), Future Interests, Perpetuities and the Family Settlement (pp. 195-224), The later development of Commercial Interests in Land (pp. 225-251) and The Nineteenth-century Reforms and Thereafter. (pp. 252-261) Its use by the student will be facilitated by a Table of Cases from Year Books and Abridgements (pp. xi-xiii), a Table of Modern Cases (pp. xiv-xvii), a Table of Statutes (pp. xviii-xx) and a List of Books referred to in the footnotes. (pp. 262-265) The Index (pp. 266-276) is not as detailed as some but is quite adequate for a work of this kind.

One of the most effective discussions in the book is that concerning the real actions (pp. 24-43), which gives the student insight into the interrelationship between substance and procedure, and lifts, as well as can be done, the shroud from the mystical concept of seisin. There is likewise a very enlightening treatment of tortious feoffments, fines and recoveries (pp. 112-129), a subject in which students detect a high degree of mystery and concerning which they are wont to ask questions requiring more class time than is justified. These questions can now well be referred to Mr. Simpson for answers. The chapter on the Statute of Uses (pp. 163-194) is likewise most helpful in fully developing the background of the statute, its infirmities and its intended and unintended effects. Other portions of the book are equally valuable, and the specific reference to only a few should not be taken to suggest the slightest deprecation of those which

are not mentioned. Indeed, the only chapter with respect to which one has a feeling of inadequacy is the last—concerning The Nineteenth-century Reforms and Thereafter. This is so brief (10 pages) that the treatment is bound to be cursory, but it must be said that brevity here accords with the author's desire to concentrate on the early history of basic doctrines.

Each student will glean different tidbits of information from Mr. Simpson. Among those which were new and particularly interesting to me were the ability of the tenant, in connection with a writ of right, to delay the action by taking to his bed and staying there "for a year and a day, whilst the action hung fire" (p. 28); the explanation (the first understandable one that I have seen) of why subinfeudation resulted in a dilution of the feudal dues (p. 50); the suggestion that the termor did not have a free tenement, not because he had no seisin, but because he had no tenement at all (pp. 69-70); the early absence of any prohibition on restraints on the alienation of a fee (p. 85); the physical basis for the distinction between the terms "indenture" (duplicates cut apart with a ragged or "indented" cut to identify them) and a "deed poll" (which had a smooth or "polled" top edge) (p. 114); the fact that even a purchaser for value from a feoffee to uses would be bound by the use if he had notice of it (p. 169); the possible inaccuracy of the notion that equitable future interests not conforming to common law models could be freely created before 1535 (p. 171); and the practical ability, through the process of settlement and re-settlement, of creating perpetual unbarrable entails, though these were theoretically not known to the common law. (p. 221)

Contrary to what might be expected of an introduction to the history of a subject usually thought to be dry as dust, the book is not without humor. In describing the extraordinary services which could be stipulated for upon a grant of land, we are told that "a tenant was required to find annually a mad bull to divert His Lordship William, Earl Warren. . . ." (p. 6) It also appears that ". . . [E]ven a woman could perform the ceremony [of homage], Littleton noting, somewhat primly, that she did not say that she became the lord's woman, since this would be inconvenient." (pp. 15-16) Further, the author drily observes that "What in effect checked excesses of piety in the medieval period was the inability to devise land." (p. 53) With a grain of philosophy mixed with a grain of humor, he also tells us that "devises hedged about with conditions of residence, celibacy, and so on enable a devisor to die happy that even from the grave his wisdom may endure to govern and restrain the youthful folly of his children." (p. 179)

All in all, this is a delightful little book. As I hinted at the beginning of this review, the only spot where I might (or would have the knowledge to) disagree with Mr. Simpson is in connection with his suggestion that

undergraduates should keep "historical studies, to some extent at least, distinct from their work on current law—to read history as history, and law as law." (p. vii) This is all very well, but it presupposes that the law student will read history even if it is not forced upon him—an assumption which seems to me in most instances unrealistic. I am well aware of the pressures on law school curricula and I am equally cognizant of the trend, in modern property casebooks, away from historical approach—a method which may well have been overdone in the past. If, however, we are to produce property lawyers with the vision for real progress, if we are to teach law "in the grand manner," our students must be aware of at least a modicum of the background underlying much of the outmoded dogma which persists in the "modern" law of property. If I am right, Mr. Simpson's book could well be required reading for every first-year property student.

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