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RETROACTIVE LEGISLATION
AFFECTING
INTERESTS IN LAND

by

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Foreword

by

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Ann Arbor
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1953

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To my Wife

Foreword

PROFESSOR SCURLOCK'S monograph covers an area of the law which is commonly by-passed in treatises and in classroom instruction. If we could merely tear Maitland's "seamless web" of the law and retain all the shreds, no part of the legal system would escape us. What we actually do, however, is to set up, in a more or less arbitrary fashion, numerous centers of legal classification, such as contracts, torts, property and constitutional law, to which closely related legal materials are attracted as to a magnet. But those legal materials which stand midway between two centers of attraction are likely to be subjected to equal magnetic pulls in opposite directions and to be drawn to neither.

These observations are particularly applicable to legal doctrines concerning the subject of retroactive legislation affecting interests in land. The constitutional law expert has left it for the property expert. The property expert has left it for the constitutional law expert. Thus, no one has given it adequate treatment.

But the practitioner, the judge and the legislator cannot limit the field of their activities to the law which clusters about certain arbitrarily selected centers. They must deal equally with the borderline areas, because to them law is an aspect of life. The scores of reported cases in the law books dealing with retroactive statutes concerning land bear silent witness to the importance of the subject of this monograph and the frequency with which its problems arise.

The statute books are full of retroactive legislation which modifies traditional incidents of property institutions. No

lawyer can safely advise his client concerning the effect of such statutes, without some basic notions of their validity under state and federal constitutions. Yet up to this time there has been no adequate treatment of this problem as a unit. Indeed, far from finding any guiding principles in standard textbooks, the lawyer may even have serious difficulty in locating all the reported decisions which deal with the precise question of constitutionality with which he is confronted. Professor Scurlock's monograph will aid the lawyer in both particulars. It will give him guiding principles, and it will furnish him with an adequate picture of the case law dealing with his own peculiar problem.

Moreover, this monograph will supply a long felt want of the legislator. Everyone who has drafted legislation modifying the law of real property has been confronted at the outset with the question: Shall I make this applicable to interests in property already created? Or shall I limit its operation to interests arising under deeds and wills which take effect after the legislation is enacted? Professor Scurlock's book throws a flood of light upon this question, such as will be found in no other treatise or article.

For the legal philosopher, as well as the practical man of affairs, this monograph has its contribution. While it deals with a subject matter involving both constitutional law and the law of real property, the questions discussed commonly turn on the nature of property interests. To the person who asks the question what is property, or who is confused by the chameleon-hued concept of "vested interests in property," this book has something to offer.

In short, for the lawyer, the judge, the legislator and the legal philosopher, this monograph constitutes a valuable contribution to the science of law.

Preface

I HAVE discussed in the Introduction the method of approach and arrangement of materials, to which the reader is referred.

This study was begun while I was a graduate fellow at the University of Michigan Law School. It is a great pleasure for me to express my appreciation for the guidance given by my thesis committee, Mr. Burke Shartel, Mr. Paul G. Kauper and Mr. Allan F. Smith, and for the helpful criticisms of Mr. Lewis M. Simes.

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School of Law
University of Kansas City
February, 1953

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