Michigan Law Review

Volume 58 | Issue 8

1960

Simes & Taylor: The Improvement of Conveyancing by Legislation

W. Barton Leach
Harvard Law School

RECENT BOOKS

THE IMPROVEMENT OF CONVEYANCING BY LEGISLATION. By *Lewis M. Simes* and *Clarence B. Taylor.* Ann Arbor: The University of Michigan Law School. 1960. Pp. xxv, 421.

As viewed from ivory towers on the eastern seaboard Ann Arbor is a minor oasis in a semi-arid region stretching more than two hundred miles from Grosse Pointe to The Pump Room,[1] sheltering a college dedicated to the worship of Tommy Harmon and a law school dedicated to the memory of Cook on Corporations.

Whatever the accuracy of these impressions, all lawyers know that the University of Michigan Law School has a great and continuing tradition of teaching and research in Property, the names of Simes, Aigler and Basye being known and respected nationwide.

The Improvement of Conveyancing by Legislation is the latest of the constructive works of Professor Lewis M. Simes, now emeritus at Michigan and teaching at Hastings, with his assistant Clarence B. Taylor. Jointly-sponsored by the Section of Real Property of the A.B.A. and the University of Michigan Law School, it is the first of a trilogy; the other two will offer Model Title Standards and a Manual of Conveyancing.

This book pulls together in only four hundred pages a wealth of learning and practical experience on conveyancing, sorts out the factors that make land transactions expensive and insecure, and offers a string of thirty-three Model Acts for the guidance of bar association committees and legislators who realize that the profession owes to itself and to the public a vastly more efficient conveyancing system. The project owed its birth to the initiative of the A.B.A. Committee on Improvement of Conveyancing under the successive chairmanships of Professor John C. Payne of the University of Alabama and Mr. Albert B. Wolfe of the Boston bar. Professor Paul E. Basye, whose work on Clearing Land Titles was an almost necessary forerunner, acted as Chairman of a special A.B.A. committee on this research project.

The authors began at the grass roots, not in the libraries. They obtained from six selected states 214 answers to a questionnaire on Hazards in Conveyancing Practice and to some extent built their endeavors around the difficulties thus disclosed. Some interesting facts emerged. For example, "fraud or deception in title transactions" was more than three times as great a problem in Florida than in the other five states. Again, "defects in our title system rarely cause people to lose their real estate but do cause difficulty in making sales or mortgage loans" — in other words, the "defects" which our conveyancers object to are mostly hobgoblins of their imagina-

[1] These views of course are those of the more widely travelled cognoscenti. Bostonians who deem that the West begins at Albany and that Buffalo is on the frontier of Outer Space have the impression that Ann Arbor is one of the lesser subdivisions of Martha's Vineyard.

tions or very small risks. As to an individual purchaser I suppose a play-it-completely-safe attitude is necessary, to protect both the investment and the resale value. But I wonder whether large-scale lenders recognize the business wisdom of expanding their business by taking small title risks and setting up a reserve for possible losses.

The Model Acts cover a broad spectrum from basic substantive reforms (e.g., Sale of Real Estate Affected with a Future Interest) to recording reforms affecting practically all titles (e.g., Marketable Title legislation) to elimination of the destructive effect of small human errors (e.g., Name Variation Act). Each act is accompanied by a survey of current law and practice written in a style which is both readable by the ordinary lawyer and persuasive to the conveyancing specialist. I have recommended these text surveys as review reading by my first-year Property students; and I can think of none better.

The approach is conservative. This is a repair job on an existing machine with no suggestion that it might be well to install a new motor, to say nothing of turning in the car for a new model. I sense some protective attitude toward the vested interests of abstract and title insurance companies: "To establish official tract indices is, in effect, to socialize one aspect of the abstract business."[2] The Torrens system is not even mentioned in text or index and is given the back of the hand in Professor Basye's foreword: "A system of land registration in every state seems obviously unacceptable in this country."[3] Why should this be so? I have yet to see an exploration of the adaptability in America of the English device of the registration of "possessory titles" by which every conveyance, after passage of the act, starts a registration with no investigation or guaranty of the back title (and hence no big registration expense); over a period of years, with an appropriate statute of limitations, this gradually produces title registration of all land in the jurisdiction — and permits the abstract companies, title insurance companies, and conveyancers to adjust to the change over a period of decades.[4] I can't see why this won't work in the United States.

As I have remarked elsewhere it is one thing to draft a good statute and another to get it enacted.[5] I therefore express some concern over the fact that draft statutes by Judge Charles E. Clark (1941) and the Commissioners on Uniform State Laws (1944) limiting conditions, restrictions and reverters evoke this rather pathetic statement: "Neither Judge Clark's proposed act

[2] P. 88. "Several title companies and the American Title Association gave generously" to the project. P. xii.

[3] P. xi. My enthusiasm for the Torrens system is somewhat shaken by a considerable list of its defects and unresolved problems provided by Mr. Albert B. Wolfe, a most experienced and broad-minded Boston conveyancer.

[4] See Land Registration Act, 1925, 15 Geo. 5, c. 21, §§6, 11; MEGARRY AND WADE, REAL PROPERTY 935 (1957).

[5] Leach, "Perpetuities Legislation, Massachusetts Style," 67 HARV. L. REV. 1349 (1954) reprinted as Appendix II to LEACH AND TUDOR, THE RULE AGAINST PERPETUITIES 197 (1957). In this article I recount personal experiences in getting a perpetuities reform statute enacted in just one state, and offer some advice to statutory reformers.

nor the Uniform Act has been enacted in any state."[6] Action on these matters requires dedicated local work by individuals on state legislatures on matters which are not, shall we say, within the primary concerns of the legislators.

Furthermore, federal tax laws now in force make it risky for organizations which wish to obtain or retain tax-exempt status to join in the enterprise, for such organizations must meet the test that "no substantial part of [their] activities is carrying on propaganda, or otherwise attempting, to influence legislation."[7] Surely the Congress did not intend to have this provision prevent non-partisan disinterested effort by, say, the American Law Institute or state bar associations to procure enactment of model acts such as those with which Simes and Taylor deal. Possibly the first target of the property-law reformer should be an appropriate amendment of the tax laws to clear the path for organized support of the model acts. The title page of this book contains the declaration that "nothing herein shall be deemed to represent the views of Michigan Law School or the American Bar Association." If, as I assume, this is considered necessary to avoid tax troubles, it is a great shame. Both the Law School and the A.B.A. ought to give this fine book their fullest approval and urge legislative action in pursuance of its recommendations.

W. Barton Leach,
Story Professor of Law,
Harvard Law School

[6] P. 208.

[7] This limitation appears in the Internal Revenue Code of 1954 in identical terms with reference to the gift tax (§2522), the estate tax (§2055) and the income tax (§501). It puts in jeopardy gifts to the League of Women Voters, Good Government Associations, and Bar Associations. Dulles v. Johnson, (S.D. N.Y. 1957) 155 F. Supp. 275, revd. (2d Cir. 1959) 273 F. (2d) 362; League of Women Voters v. United States, (Ct. Cl. 1960) 180 F. Supp. 379 (3 to 2 decision for United States); Seasongood v. Commissioner, (6th Cir. 1955) 227 F. (2d) 907. In the first two of these cases litigation appears not to be at an end.