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Book Review (reviewing W. Barton Leach, Cases and Materials on the Law of Future Interests (1935))

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enforceable contract does not give rise to any trust at all.¹³ It seems a rather strong thing thus to throw over a form of statement around which the decisions have been built for two hundred years. Moreover, the matter is not merely one of names; if the Institute is right, it follows that such cases as *Felch v. Hooper*,¹⁴ *Boyce v. Pritchett's Heirs*,¹⁵ and *In re Cuming*¹⁶ were wrongly decided.

It is not to be supposed that questions like these have been overlooked by the reporter and his associates. Upon any such points, they could doubtless give cogent reasons for the faith that is in them. This, however, only goes to emphasize the limitations of the Restatement. In spite of its form, it is really nothing but an anomalous species of textbook, which gives little of the reasoning that has led up to the various propositions and none of the decisions which must remain the ultimate authorities, no matter how much the Restatement comes to be esteemed. As a skeleton it is excellent; but, like other skeletons, it can function only when clothed with flesh. If it becomes the basis of a comprehensive text which shall make available the learning of its authors and the wealth of material which they have collected, its contribution to the sound development of the law will be inestimable, even if it never reaches the point of rendering the examination of reports, digests, and encyclopedias superfluous. As suggesting the possibilities in this direction we now have Beale on *The Conflict of Laws*¹⁷ and are soon to have also the second edition of Williston on *Contracts*.¹⁸ May we not hope that alongside these two masterpieces there will soon stand a third — Scott on *Trusts*?

HAROLD S. DAVIS.*

CASES AND MATERIALS ON THE LAW OF FUTURE INTERESTS. By W. Barton Leach.¹ Chicago: The Foundation Press, Inc. 1935. Pp. xxiv, 1025. \$6.50.

During the past 40 years the law of real property has been adapting itself to new conditions. Whether, if one is to speak metaphorically, it should be said to have burst its cerements or its swaddling clothes perhaps depends upon how one looks upon the relation between the older law and its recent developments. The causes are numerous — the increasing importance of taxation; an impatience with distinctions that, like the worthless offspring of a worthy sire, have nothing to recommend them except their ancestry; the desire for flexibility in merchandising land; assimilations, sometimes conscious, sometimes unconscious, of the treatment of real and personal property and of legal and

¹³ The language of the Restatement, "Even though the purchaser has paid the purchase price, the vendor does not thereby become a trustee for the purchaser", may be compared with a passage from 1 AMES, CASES ON EQUITY JURISDICTION (1904) 241: "A vendor of land is often described as a trustee. If the purchase money has been paid, the title is not inapt, since the vendor holds the dry legal title, the entire beneficial interest being in the buyer."

¹⁴ 119 Mass. 52 (1875), AMES, CASES ON TRUSTS (2d ed. 1893) 246.

¹⁵ 6 Dana 231 (Ky. 1838).

¹⁶ 5 Ch. App. 72 (1869).

¹⁷ (1935).

¹⁸ (1st ed. 1920).

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equitable interests — they have all played their parts with varying emphasis in the bringing about of these changes. They have come by various methods: sometimes by the open one of statutory change, sometimes by the chipping process so dear to the common law judges, sometimes by ignorance or inadvertence, sometimes by an attempt (not always successful) at a conscious and definite break with the older tradition.

Professor Leach's book gives an interesting and well integrated picture of this history so far as it concerns the law of future interests. How far the old adage "*Melius est petere fontes quam sectari rivulos*" should furnish the theory upon which a casebook should be constructed is a matter on which opinions well may differ, although the general fashion is undoubtedly changing. Professor Gray's Volume V,² which covered approximately the same subject matter as Professor Leach's book, applied the maxim vigorously. So did Professor Kales in his *Cases on Future Interests*.³ Professor Leach does so sparingly but adequately. The English sources are there: *Archer's Case*,⁴ *Pells v. Brown*,⁵ *Manning's Case*,⁶ *Doe d. Willis v. Martin*,⁷ *Clobberie's Case*,⁸ *Chandos v. Talbot*,⁹ *Doe d. Blomfield v. Eyre*,¹⁰ *Norfolk's Case*,¹¹ as are the more recent important English decisions. Going through the book, however, the general impression is one of modernity and of American law. A large proportion of the cases are after 1870 and a goodly share of these are of the present century. This is as it should be. As the streams get away from their source, they take on characteristics of their own. They may sometimes flow less limpidly and less directly, and this is regrettable; but if they do, they do, and it is with them as they are that we have to deal. Cases which present to the student the kind of problem that he will or may encounter a few years hence have a vividness and interest for him that the older English cases necessarily lack; and the reasoning and results of the modern cases, bad or good, are the kind of reasoning and the kind of results that he must face. In *re Matter of Copps Chapel Methodist Episcopal Church*,¹² *Rhode Island Hospital Trust Co. v. Anthony*,¹³ and *Hiles v. Benton*¹⁴ are good examples of the stimulating selectivity of the book.

The volume is a well organized and usable one. It seems to be built upon the eminently sound idea that future interests is a live and important subject, that there is a lot of material to be covered, and that the sooner the student can get to the heart of the problems the better. Each chapter begins with a note of from one to five pages, and this serves to orient the student with respect to the subject matter of the chapter. An instructor always welcomes helpful material that he can use; he does not like to have the conduct of the course taken out of his hands or his pet surprises anticipated by the text. Just how far an editor should go may be a delicate question, but these notes are not open to the objections indicated. The course in future interests presupposes a working knowledge of the elements of real property law. These notes are a legitimate refresher of the memory of the student and ought to

² SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF PROPERTY (2d ed. 1907).

³ (1917).

⁴ P. 62.

⁵ P. 66.

⁶ P. 202.

⁷ P. 268.

⁸ P. 300.

⁹ P. 301.

¹⁰ P. 451.

¹¹ P. 728.

¹² P. 34.

¹³ P. 650; see (1929) 77 U. OF PA. L. REV. 422.

¹⁴ P. 958.

save time and effort on the part of the instructor in getting into the problems of the course. Professor Leach makes liberal use of extracts from textbooks, articles, and the American Law Institute's Restatement of the Law of Property. The important part that statutes play in real property law is adequately reflected by the incorporation of statutory material.

The notes to the cases deserve special mention. They are of two kinds, professional and human. The professional notes are in part of the usual informative sort, giving references to additional cases or other material, and in part of the question variety, posing fact situations founded on decisions, the degree to which they control the instructor depending upon how much time he allows to be diverted to them. The human notes (they sometimes expand into a text of one or more pages) are unique. One could easily put in a pleasant evening in reading them, quite apart from their connection with the cases. Professor Leach must have had a lot of fun in writing them. They vary all the way from observations on the undesirability of single life in Chicago¹⁵ to the background and consequences of the decision in *Perrin v. Blake*¹⁶ and the personal appearance of the beneficiary in the Eaton spendthrift trust.¹⁷ They are, however, much more than merely entertaining. They give to the cases a vividness and personal quality that have a distinct pedagogical value. I shall not be misunderstood when I say that in many ways these notes alone are worth the price of the book.

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INTERNATIONAL LAW. Vol. II, Disputes, War and Neutrality. By L. Oppenheim.¹ Fifth edition by H. Lauterpacht.² New York: Longmans, Green & Co. Pp. xxxiii, 113-782. \$16.00.

It was a fortunate circumstance that when the time came for a fifth edition of Oppenheim's classic treatise, Professor Lauterpacht should have been available for the task. Not often can a scholar of the first rank be found to undertake the revision of another's work. For him the enterprise must be in large measure a labor of love. One can only be thankful that it was possible to persuade Professor Lauterpacht to assume the task. Thus far only the second volume, dealing with disputes, war, and neutrality, is available; but this volume indicates that the combination of Lauterpacht and Oppenheim is a peculiarly happy one.

Just ten years have passed since the fourth edition, edited by Professor McNair, made its appearance. Those years have been a fateful decade in the history of international law. One could scarcely maintain that the outlook for the firm establishment of law and order in international affairs is as bright today as it was when the previous edition appeared shortly after the Locarno treaties had been signed. On the contrary, loss of faith in the efficacy of legal and conventional restraints in the international field is the common attitude today. Lauterpacht, however, does not share the popular disillusionment. In his view, the current phenomenon of humanity "recoiling before the boldness of its effort to translate into terms of law and order the lessons

¹⁵ See p. 241, n.19.

¹⁶ See p. 134.

¹⁷ See p. 965, n.4.

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¹ 1858-1919. The first edition of this treatise appeared in 1905-06.

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