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### Statement of the Reporter and Certain of His Advisers Appendix

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## Appendix.

### **STATEMENT OF THE REPORTER AND CERTAIN OF HIS ADVISERS.**

The undersigned having been charged by the Institute with the preparation of a Restatement of the Law of Property have now completed the first two volumes. Explanatory Notes prepared by the Reporter were printed in the Tentative Drafts, and it has been the hope and expectation of the Property Group that these Explanatory Notes or a major part of them would appear in the Final Draft of the Restatement.

The Council of the Institute in February, 1936, voted that the Explanatory Notes be not published with the first two volumes of this Restatement but that such parts as could be incorporated as Comments and Special Notes be so embodied into the Restatement. Pursuant to this decision the Director and Reporter have thus salvaged approximately 30 per cent. of the Explanatory Notes contemplated by the Property Group. The remaining 70 per cent. is to be omitted under the decision of the Council.

Upon many major points the Restatement's position is a conscious choice between the inconsistent bodies of authority revealed in the Explanatory Notes. In many other instances the Restatement's position is the best effort of the Property Group to distill a rule from specific decisions of controversies where the guiding principles have failed to receive clear formulation in the decided cases. In order that the profession might have the bases before the Group at the time of their decisions and thus fairly judge the work of the Property Group, it is essential that the Explanatory Notes be made available to them. The Property Group

also feel that the clarity and usefulness of the Restatement to the profession would be substantially enhanced by the inclusion of at least a major portion of these Explanatory Notes.

For the reasons herein stated the Reporter and those of his Advisers whose names are attached hereto, respectfully dissent from the decision of the Council not to publish these Explanatory Notes.

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School.*

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*Professor of Law, University of  
Michigan Law School.*

RICHARD R. POWELL,  
*Reporter.*

Professor Oliver S. Rundell desires to be recorded as regretting the omission of these Explanatory Notes.