

legal profession and cause the businessman, who loves to damn the Government, whether it acts, or fails to act, to tear his hair. Professor James' article is largely historical and avoids the knockdown and drag out legal and sound public policy questions which all of us have heard and many of us have participated in.

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Cases and Materials on Possessory Estates. By Richard R. Powell. Second Edition. St. Paul: West Publishing Company, 1943. Pp. xxxix, 565. \$5.00.

Compared with the edition of 1932, the volume under review constitutes an extensive revision of materials, but the basic structural plan is unaltered except for the desirable addition of a new section on estates for years. Of the eighty-one text cases in the first edition only thirty-one are included among the eighty-five text cases of this edition. Of these last, fifty-two were decided in this century and twenty of them since 1932. The substituted cases are better, particularly from the viewpoint of the instructional problems presented. Lengthy treatments of such historical bric-a-brac as scintilla juris, writs of formedon, and the fine and common recovery are wisely excised. Treatment of the fee tail is reduced to a size more commensurate with its relative importance. Jurisprudence material, including an excerpt from Digby concerning medieval reification of property concepts, has been conveniently dropped. However, such material is not out of place here because American law school custom generally reserves the subject as such for graduate study, and forces the undergraduate to take his jurisprudence in snippets, spliced on other courses. Two-fifths of the volume is text, including selections from various text-books in the field, Restatement material, and valuable illustrations of modern statutes. But the bulk of the text material is historical and taken in large part in the form of excerpts from the Bigelow and Madden *Introduction to Real Property*.

Content and organization of material portray an understanding grasp of the difficulties involved in introducing the beginner to the subject of real property. On the whole, the volume is excellently designed for the accomplishment of this objective. The book is conveniently divided into two parts. The first part includes the all-important scheme of legal estates as modified in equity. The second part covers the conventional aspects of possessory estates.

There are several details of inclusion with which the reviewer does not agree. The material concerning "the methods whereby an acknowledged power to transfer an estate in fee simple can be exercised" concludes with a "greatly simplified" statement of the facts along with the holding in *Wolfe v. Henry Shelley*.¹ But this case, which first applies to the heirs of the body an ancient rule governing a similar limitation to heirs, illustrates a conveyance effective at common law to create a fee tail, not a fee simple.² While this rule has been anticipated in the text,³ nevertheless as a formal introduction to the famous godmother of the Rule in Shelley's Case, the abbreviated form here presented seems rather like parading her on the ballroom floor in a chemise instead of an evening gown.

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¹ P. 83.

² Hargreaves, Shelley's Ghost, 54 L. Q. Rev. 70, 76 (1938).

³ P. 60.

In the prior edition the problem of dower and curtesy as effected by defeasibility of the fee of the deceased spouse was presented in two cases supplemented by footnotes. This has been replaced by the editor-reporter's ten-page justification of the doubtful Restatement position that dower and curtesy are in all cases deemed derivative interests.⁴ It is felt that the deleted cases presented better teaching material. Then, too, the reasoning employed in this able monograph has not gone without dissent.⁵ However, the Restatement of Property blackletter occasionally serves to put the law in mourning by misstating it; and, therefore, this exposition might of itself deserve inclusion as an illustration of expression of policy considered sufficient by the American Law Institute to warrant a departure from certain decided cases.

Treatment of estates for years opens as follows: "The contractual origin of estates for years has been traced."⁶ Following down the reference given one finds but seven wholly inadequate lines on the topic, which disclose the fact that the matter is further discussed in a portion of Bigelow and Madden not included in this volume. Since it contains about eighty pages of the ninety-page Bigelow and Madden work, for the sake of completeness the remainder might conceivably have been included in appropriate places. As to the "curious history of leaseholds" in particular,⁷ as well as real property concepts generally, what the student requires for enlightenment and stimulation of interest is not just the bare bones of legal doctrine, but the conditioning economic and social factors as well.⁸

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⁴ P. 176. As to the accuracy of the Restatement position, see Maloney, *Restatement of the Law of Property*, 12 *St. John's L. Rev.* 1, 10 (1937); Schnebly, book review, 37 *Col. L. Rev.* 881, 883 (1937); Vance, *The Restatement of the Law of Property*, 86 *Univ. Pa. L. Rev.* 173, 183 (1937).

⁵ Vance, *op. cit. supra* note 4, 183-186.

⁶ P. 187.

⁷ The economic factor seems to have been paramount. See Plucknett, *A Concise History of the Common Law* 366 (1929).

⁸ See a comment on the editor's excellent crystallization of the matter, McDougal, book review, 32 *Ill. L. Rev.* 509, 514 (1937). See also Bolich, book review, 19 *N. C. L. Rev.* 425, 429 (1941).

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