

first-rate job of spotlighting a neglected area surrounding one of our most important institutions of law—the trial court. His plea is that greater attention be given to the “fact-finding” procedures in legal controversies. He points to the grave injustices that arise not only from the use of faulty procedures, but also from the inability of those with limited resources to cope with them. His suggested reforms in legal education and trial court procedures—aimed at facing “courthouse realities”—merit the serious consideration of all of those who are interested in cleaning up the debris of our own back yard before being concerned about the lack of democracy abroad.

JULIUS COHEN*

The Law of Real Property, Vol. I. By Richard R. Powell. New York: Matthew Bender & Company, 1949. Pp. xiii, 792. \$16.50.

This is the first volume of a five-volume treatise on land law. Those who as students, colleagues, American Law Institute associates or otherwise know Professor Powell, his industry, his keen intellect, his lack of prejudice and accessibility to new ideas, will expect great things of these books. When a man of this kind has devoted himself for so many years to the study and incidental practice of land law, it is appropriate that he should be recognized as this country's master of that important field of the law. One is curious, then, to see what the master can do with the subject. Is the subject such that it is susceptible of masterful treatment?

The philosophical discussion in Chapter 2 of the Social Evolution of the Institution of Property is well done. It leaves with lawyers an admonition that they have an opportunity and a responsibility in relation to the constantly changing concepts of property, to shape them for the good of society. It is likely, however, that in the future as in the past, the lawyers' part will be to set brakes against the pressures for change that are exerted by others, to keep the changes from coming too fast.

Chapter 3, English Background on Land Tenure, probably makes as vivid as possible in a short treatment the way in which land tenure operated and developed in England from the time of the Conquest down to the beginning of our American land law. This is interesting history, is something which a cultivated lawyer should know, at least superficially, and is always given some space in a treatise on land law. I doubt, however, that it has had any substantial effect upon American land law. The interests which are permitted and recognized at the present time are the interests which the practical needs of our situation called for. It is not surprising that those interests coincide, in many respects, with those in historical England, or with those in other developed countries, historical or modern.

The treatment in Chapter 4, on pages 73 to 93, of the economic, political, so-

* Professor of Law, University of Nebraska.

cial and religious agitations which were going on in England at the time of the colonization of America is most interesting.

The description in Paragraph 37 regarding the medieval system of land tenure agriculture in England leaves one with a sort of "Once upon a time" impression. Our agricultural proconsuls at their outposts in Southern Germany in 1950 would understand these medieval practices because they are still followed today, and if they are, as our author says, "grossly inefficient" we, for humanitarian and tactical reasons make up the deficit. During the brief honeymoon period of the Occupation when the four victorious powers were constantly sitting in conference to determine how to remould German law, agriculture, etc., the question whether land-holding should be restricted to units large enough to be "efficient, economical, family size" farms, or whether the cave dwellers in the ruins of the cities should be permitted to scratch a living, even though a very poor one, from some little piece of farm land, was an acute one, both to the Germans and to the allies. Our outposts all over the world are, no doubt, giving our representatives a rare opportunity to study and appraise strange methods of land holding and tillage. It may be that these methods are of greater immediate importance to us today than those of medieval England.

Beginning on page 93 we have, after a brief introduction, some two hundred and fifty pages of historical treatment of the origins of the land law of all the states and territories. The fullest treatment is given to Virginia and Massachusetts, the former having been a commercial proprietorship and the latter what the author calls a theocracy. The treatment of each of the states is, so far as I know, something quite new in a book of this kind. The history is, of course, interesting. My impression of this part of the book is that it should not have been included. If a lawyer has an intellectual curiosity about the early history of some state, other than his own, he can get from a history book or an encyclopedia most of the history here found, and much not here found. So far as his own state is concerned, he will usually want a much fuller historical treatment than the one here given. The citation in these historical sketches, of the cases, many of them not relating to land, in which the courts have decided that English common law or early English statutes are or are not the law in particular states, will not be very valuable to the practitioner. As to his own state, he already knows or can readily find these cases; and he would not naturally go to a treatise on real property to find them, whether for his own state or some other.

After reading the history and origins of the land law of the different states, one gets the feeling that that history has had very little to do with the shape which that law has taken. It is essentially the same in all the states. Striking variations which do exist are the result of such rather accidental things as the preparation of the Field Code at about the time when some pioneer state was looking about for some ready-to-wear legislation.

Part II, Capacity to Hold and to Deal with Interests in Land, contains an

excellent treatment of the problems of aliens in land law. This question is timely, because of the outlook which the Supreme Court of the United States has on the question of equal protection of the laws, and because of the serious international consequences which may flow from one or another treatment of aliens. Beginning on page 405, the capacity of Indians is treated. This material will be valuable to the lawyers in the considerable number of states where land titles must be traced through Indian tribal or individual ownership.

The material on the capacity of married persons, pages 429 to 460, seems to be what is contained in all sizeable books on real property or domestic relations. The four pages devoted to infants contains, of course, nothing new. Then follow brief treatments of the capacity of mental incompetents, and felons.

Chapter 7 in Part II deals with the capacity of natural persons as unincorporated groups, such as clubs, churches, joint stock companies, business trusts and partnerships; Chapter 8 with the capacity of private corporations in land transactions, and Chapter 9 with the capacity of individuals or corporations to act as fiduciaries in land transactions. Chapter 10 gets into new ground in its discussion of the now important activities of the nation, the state, government corporations, foreign nations, The United Nations and other international organizations in acquiring and managing land.

Because of the nature of the subject matter itself, it does not require a Richard Powell to write a book like this. Nothing of importance has happened in the law of real property since other large treatises were written. What little has happened in any particular state is well known to the conveyancing bar of that state. I have, however, no doubt that Volume I is not much more than an introduction to a treatise, the subsequent volumes of which will be done as well as anyone could possibly do them. There is probably no present place in real property writing for the indignant moralizations of a Wigmore; though Gray, in his essay on restraints on alienation thundered very convincingly, though without much effect upon the courts. The teacher of property can hold the interest of his class by his dialectic skill, and because of the rather sharp drawing of lines of which the subject is susceptible. But when it comes to writing books for practitioners of property law, who want the law set down for them, when the writer has set it down he is through. And that fact does not leave room for a very great difference between the book of a master and that of a lesser writer.

J. WARREN MADDEN*

* Judge, U.S. Court of Claims.