THE NEW LAWS OF PROPERTY IN ENGLAND

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READERS of English newspapers have probably seen articles or paragraphs, usually in small type and in out-of-the-way corners, but often in the columns devoted to trivial matters and *facetiae*, referring to recent changes in the laws affecting property in England. These articles usually give no particulars of the changes, but are confined to statements to the effect that lawyers, after years of study and experience, have had to go to school again, rubbing shoulders with tyros and youthful articled clerks, in order to learn the art of conveyancing as revolutionized by the new statutes.

It is true that these changes, originally contained *en bloc* in one Act of Parliament (the most voluminous in English parliamentary history) and since carved up into more digestible portions and distributed among seven Acts (the original Act of 1922 being almost wholly repealed) are surrounded by and embedded in a mass of detail which appals at the first glance. Much of the detail, however, deals with the minutiae of the science of conveyancing, and by far the greater part of it is merely a re-enactment, with improvements suggested by experience, of sections and clauses of Acts of Parliament which are familiar as household words to every conveyancer. The seven new Acts are a complete code of conveyancing. They repeal, and in many cases re-enact, literally hundreds of statutes passed during the last six hundred and forty years. In fact, the mere list of statutes repealed by the new Acts is curious and instructive reading, not only for the lawyer but for the student of constitutional history.

The repealed statutes show how, during the last six hundred years, the Englishman has gradually emancipated himself from the tyranny of priests and feudal lords. Among them stands out the Act which compelled bishops, before availing themselves of their right to appropriate to themselves the effects of such of their flock as died intestate, to make provision for payment out of those effects of any debts which the intestate may have left. They include, too, the Act which made it impossible for the heir of lands to repudiate the debts of his father or predecessor, and the Statute of Uses, in the reign of Henry the Eighth, one of the objects of

which was to avoid secret conveyances of land for priestly uses. In passing, it may be noticed that the lawyers of that day very soon found a flaw in the Statute of Uses which utterly defeated its object, but the Statute proved to be a piece of conveyancing machinery which worked exceedingly well for four hundred years, and was as good as new until it was "scrapped" on the 31st of last December.

Embedded in some six hundred sections of which the new Acts consist are three principal reforms which seem to have escaped the notice of the press and people of England. These are (1) the abolition of the right of primogeniture; (2) the abolition of "copyhold"; (3) the reform of the laws of inheritance and of the division of intestates' property.

That these three great reforms should have passed by consent of the three great parliamentary parties, without any popular demand, almost undebated and practically unnoticed, is striking and instructive. It suggests two reflections:—first, that there may be some danger of really controversial changes in law being made unnoticed under the guise of reform of legal procedure (for the Committee which introduced these changes had a mandate merely "to advise what action should be taken to facilitate and cheapen the transfer of land"); and secondly, that the government should officially publish in the press some notification in plain untechnical language of the effect of changes in the law.

In this instance, even if the reforms may almost be said to have been smuggled through, there can be no question that they are highly beneficial and acceptable to the great majority of the people; but it is singular that the newspapers, while dwelling on the complexity and difficulty of the Acts, should fail to give any idea of their effect. As to their complexity and difficulty, they are indeed lengthy and difficult to peruse, but the main principle emerges clearly on the first reading, and the details fall quickly into their places and commend themselves to all experienced lawyers by their simplification of procedure and straightening of paths which have hitherto been crooked.

Until the end of last year there were three descriptions of land tenure in England:

> (a) Freehold, according to which as a general rule the land on the death intestate of the owner passed to his eldest son or other eldest male heir. But this rule was subject to two exceptions, for some freehold land was of gavelkind tenure (by which the land passed to the sons or other heirs in equal shares), and some of "Borough English" (by which the land passed to the youngest son or other youngest heir).

(b) Leasehold, which on the death of the owner passed to his next of kin as if it were money or stocks.

(c) Copyhold. This was the tenure by which the serfs or villeins of the feudal system held land from the lord of the manor, originally at his will and pleasure, but for some centuries past by a tenure as secure as freehold but subject to irritating fines, reliefs, heriots and forfeitures. On the death of an owner of copyhold land, the property passed to the person who according to the custom of the manor was considered the heir. In some manors the heir was the eldest son, in some the youngest son, while in others all the sons inherited in equal shares.

The distribution, on intestacy, of money and goods was until the end of 1925 regulated by Acts of Parliament passed in the reigns of Charles II and James II (amended by an Act passed in 1890). The code of distribution was complicated, and made an insufficient provision for widows, though by the amending Act of 1890 the widow, if there were no children, took £500 as a first charge on the estate and one-half of the remainder of the money and goods, the other half going to the relations of the deceased. These relations had the power to insist upon the deceased's furniture being sold, instead of being left to the widow as common sense and humanity would seem to dictate. In the case of all persons dying intestate after the end of last year, their property, whether consisting of land of any tenure or description, or of money, stocks, shares or goods, is divided among the family according to simple and logical rules. In the first place, the widow or husband takes all furniture and a sum of £1,000 (or the whole estate if it does not exceed £1,000 in value). In the next place the widow or husband takes the income of one-half of what is left for life, the other half (and, on the death of the widow or husband, the whole) going to the children. In default of children, the widow or husband takes the whole for life, and at her or his death the whole passes to the father and mother of the deceased (in equal shares) or to the survivor of them, or, in default of surviving parents, to the brothers and sisters, or to the grandparents, uncles, aunts or first cousins as the case may be; and it is only in default of all these that the surviving widow or husband takes the capital of the whole property. It is not easy to understand why the Legislature continues to prefer a parent, grandparent, uncle, aunt or cousin to a childless husband or wife to the extent of depriving the husband or wife of the power of disposing by Will of the property of the deceased spouse; and it must be supposed that our reformers, who have not hesitated to abolish the venerable Statute of Uses, wanted the courage entirely to depart from the provisions of the Canon Law

on which the Statutes of Charles and James were based. Moreover, since statistics show that 98 per cent. of intestates leave less than £1,000, this anomaly is of comparatively little importance. It is, however, of sufficient consequence to make it desirable that any childless man, having more than £1,000 to leave and preferring his wife to his grandfather, uncle, aunt or cousin, should signify his preference by making his Will.

It is not easy to appreciate the effect of these changes without examples; and, indeed, lawyers have, from the earliest times, been fain to invent fictitious characters to illustrate and exemplify the working of the law. John-a-Nokes, Tom-a-Styles, John Doe and Richard Roe are names not unfamiliar to the layman; Blackacre and Whiteacre, the imaginary landed estates which they inherited, bought, sold or illegally appropriated, are also not unknown. Let us then imagine two Englishmen, John Doe and Richard Roe, who, after acquiring competent fortunes in the Dominion, have returned to their native country, married, invested their considerable funds in land, houses, stocks and shares in England, and died, John Doe on the last day of 1925, and Richard Roe on the first day of 1926, each leaving a widow, three sons and three daughters, but each having imprudently neglected to make a Will.

We will suppose that each of them lived in his own freehold house in London worth £5,000, that each had copyhold land in Sussex worth £4,000 and freehold land in Kent worth £6,000, and that the remainder of the property of each, amounting to £36,000, was invested in stock of the British government, making a total of £51,000.

The property of John, who died in 1925, would at his death be dealt with as follows:—

> The freehold house in London would go to his eldest son, but the widow would be entitled to one-third of it for her life.
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> The copyhold land in Sussex (being governed by the custom of Borough English) would go to the youngest son, but the widow would, in general, be entitled to the whole of it for her life (though in some manors she would take only one-third for life, and in others she would take no interest in it at all).
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> The freehold land in Kent (being governed by the custom of gavelkind), would go to the three sons in equal shares, the widow being entitled to one half of it for life
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> The furniture, in default of agreement between the widow and children, would be sold, and the proceeds added to the proceeds of the government stock. We will assume that all the children were of age, and that they consented to their mother keeping the furniture.

The government stock would be sold, realizing £36,000, which would be divided as follows:—

To the widow £12,000.

The sons would probably buy out their mother's life interests in the London house and the properties in Sussex and Kent, and, assuming that they did so, and neglecting, for the sake of simplicity, the amounts which they would have to pay her, the children's shares would work out as follows:—

The eldest son would receive

Value of London house	£ 5,000
Third share of land in Kent	2,000
Sixth Share of stock	4,000
	£11,000

The second son would receive

Third share of land in Kent	£ 2,000
Sixth share of stock	4,000
	£ 6,000

The third son would receive

Value of Sussex land	£ 4,000
Third share of land in Kent	2,000
Sixth share of stock	4,000
	£10,000

And each daughter would receive

Sixth share of stock	£ 4,000

In the case of Richard, who died in the early hours of 1926, the division would be as follows:—

To the widow the furniture and £1,000, and an interest for life in £25,000, being one-half of the remaining £50,000.

To each of the six children, irrespective of age and sex, £4,166. 13. 4. payable immediately, with a further £4,166. 13. 4. on their mother's death.

If Richard were childless, his widow would take the whole £50,000 for her life, and at her death the whole would go to her husband's parents, brothers and sisters, grandparents, uncles and aunts or cousins living at his death.

Let us consider what would have happened if Richard had left no children and if his parents, brothers, sisters and grandparents had died in his lifetime, his only surviving relative being Anne, the youngest daughter of Richard's maternal uncle John

Nokes, who died in Australia before Richard was born. Anne married Tom Styles, a sheep farmer, survived her husband and her cousin Richard, and died childless in the lifetime of Richard's widow, leaving her property to an institution for the benefit of aborigines in Woolloomooloo. In that case, on the death of Mrs. Roe the £50,000, a plump windfall, would improve the lot of the aborigines instead of passing under Mrs. Roe's Will to (e. g.) her sisters or a possible second husband.

Thus these Acts "for facilitating and cheapening the transfer of land" have incidentally and, as it were, by the way, abolished the preference of the eldest son over the other children, and put males and females on terms of absolute equality as to the inheritance of property of every description. They have abolished many archaisms, and have grubbed up the last remaining roots of the feudal system. No person who has studied them with care can find occasion for anything but praise of the elaborate and brilliant skill of their design. They are the fruit of more than Blackstone's "viginti annorum lucubrationes", for they embody suggestions made during the past half century by lawyers of the highest eminence, whose work has now been welded together and made into one harmonious whole by a body of men whose names are for the most part unknown outside of English legal circles, but who in this have built for themselves a monument more enduring than brass.