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Cases on Equity (Third Edition) (Book Review)

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flowing with interesting, amusing, dramatic and thrilling incidents. Here he tells the story of many of the most important American cases in the last few decades, the part he played in them, the vivid personalities they involved, and their meaning to the average American citizen."

America undoubtedly is today passing through a perilous period in its history, and this book is valuable, among other reasons, because it lays bare the dangers which now threaten us. Here is a brave man warning his fellow-citizens of a critical national situation, and doing it without regard to the consequences to himself—a rare virtue in many of our public officials.

Your reviewer joins with the author's host of friends in wishing him God-speed and many more years of abundant life on the federal bench.

DAVID STEWART EDGAR.*

CASES ON EQUITY. Third Edition. By Walter Wheeler Cook. St. Paul, Minnesota, West Publishing Co., 1940, pp. xxxviii, 1296.

Considered from the viewpoint of scholarship the third edition fully measures up to the high standards for painstaking and thorough research demonstrated by the author's preceding works—as to craftsmanship, it is impeccable.

In appearance, this book is larger and more attractive than its predecessors, due to the addition of more cases than those eliminated, and the increased length of the footnotes. Found, among other changes, are the insertion of excerpts from the doctrinal writings of the author and rearrangement of the materials on principles governing the exercise of equitable powers. While the new materials and other changes are not substantial alterations, nor departures from the form and substance of the earlier editions, they do stress the author's emphasis on a more realistic "approach" than that of Maitland, Langdell, and Ames.

The tough old case books of the Langdell-Ames period were moulded in the tradition of 19th century jurisprudence, to wit, "one of eternal legal conceptions involved in the very idea of justice and containing potentially an exact rule for every case to be reached by an absolute process of logical deduction."¹ By contrast with older books, this book shows a striking dissimilarity in content, and, to some extent, in form. With the exception of well-known historical cases in the first part of the book, the major portion of the material consists of modern cases² and writings. As in his prior editions, the author devotes a large part of the opening chapters to materials intended to show the position of equity in our legal system, its powers, and their exercise. This is

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¹ Cook apparently repudiates the idea that by deductive logic one can follow fundamental conceptions to ultimate conclusions and that "no such procedure can be or ever actually is followed by any human being in solving problems which involve judgment." (1928) 38 *YALE L. J.* 405-407.

² More than fifty per cent of the cases were decided since 1900; of these, over thirty per cent since 1930.

the most significant part of the book, especially because the materials reflect the author's well-known views. The stress is upon the union of law and equity, "since, in any sovereign state there must, in the last analysis, be but a single system of genuine law."³ That this is the proper approach to the study of equity is generally acknowledged by the teachers.⁴ Here, also, are found considerable case material and excerpts from authors sufficient to show how equitable remedies differed from common law remedies. However, the material on the procedural merger of law and equity is insufficient to acquaint the student with the details and, more especially, to show how illusory procedural merger has been. Even though the student may have had a course in equity procedure, and a great many have not, it seems to me that there should have been inserted more material on this phase of the subject.

All teachers owe a debt to Professor Cook for his analysis of the concept that equity acts *in personam*; that all equitable rights are *in personam*, etc., and the inclusion of excerpts from his articles is a welcome change. The material on the control of "things" within and without the jurisdiction is quite adequate, especially with the expanded footnotes. How the attempts at complete unification of procedural law and equity have been frustrated by archaic terms are illustrated by cases and footnotes. The use of such terms as "equity", "equitable rights", "legal rights", "a claim at law", "action in equity" are still part of juristic terminology.⁵ Cook, in carrying on the work of Hohfeld, has written and taught the necessity of a more exact and effective terminology. He has given much of his time and energy to unraveling the snarls inherent in that problematical study and naturally includes in this book excerpts from Hohfeld's, and from his own, writings in the field of analytical jurisprudence. But the problems of terminology are bound to be with us until we have a complete union of legal and equitable substantive law.⁶ On this point it will be interesting to study the forthcoming opinions of law school deans, and others, recently appointed to the federal courts.

Although here and there throughout "specific performance" and other topics, old cases appear, it can hardly be said that the emphasis or approach is historical. I think that teachers, including the author, would generally agree that a thorough understanding of equity does require some knowledge of its history. Perhaps Professor Cook feels that he has included historical material sufficient for that purpose. The Statute of Limitations, as a defense in suits to reform or rescind for mistake, is covered by three cases. Whether or not this is sufficient to meet the difficult problems involved is questionable. The topic of "damages or restitution as alternative relief to specific performance" is allowed five pages. I doubt if that is enough material to cover the subject. In the last part of the book, the materials do not appear to stress the union of

³ Wesley N. Hohfeld, *The Relations Between Equity and Law* (1913) 11 MICH. L. REV. 537, 557.

⁴ As to the influence of Cook, see CHAFEE AND SIMPSON, *CASES ON EQUITY*, p. v.

⁵ See SCOTT AND SIMPSON, *CASES ON JUDICIAL REMEDIES* 1170 *et seq.*

⁶ Chafee, *Disorderly Conduct of Words* (1941) 41 COL. L. REV. 381; WILLISTON, *SOME MODERN TENDENCIES IN THE LAW* 130-138.

law and equity as much as they do in the first part, although here and there are excellent footnotes.⁷

A few years ago a prediction might have been justified that Equity, as a separate course, was doomed to disappear. Especially after Maitland's dictum and the movement for curricular reform in the law schools of America. Curricula were to be organized "in terms of the human relations dealt with and less, as largely now, in terms of the present legal concepts of the conventionally trained legal mind." Materials (to be prepared) were to be arranged to cover three broad fields, to wit, the law of domestic, business, and political relations. But the possibility of allowance of certain general and cross-section courses, such as property and contracts, was admitted.⁸ The proposals in Mr. Oliphant's article, as cited below,⁹ if fully carried out, would appear to bar equity as a separate course, unless it is treated as a "general and cross-section course." Whatever the approach, "functional" or "historical" in equity, an understanding of its principles, in the words of Holdsworth, "will never be acquired if equity is studied in snippets". The publication of this third edition of the single volume, at this time, seems to indicate that curriculum makers are going to retain equity as a separate course.

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CASES AND MATERIALS ON THE LAW OF TRUSTS. By Richard R. Powell. St. Paul: West Publishing Co., 1940, pp. lxix, 1034.

When the author produced some eight years ago his two-volume work, entitled "Cases on Trusts and Estates", both volumes were reviewed in this publication.¹ It will be recalled that there was a certain novelty of approach in these books, consisting of an interweaving of the various branches of the law with which a lawyer might be and usually is concerned in the creation of the average conveyance or devise in trust. The result in the opinion of some was quite unsatisfactory, in that there was evident a lack of continuity which seems so necessary for the beginner.² Sudden shifts from the law of wills to the law of taxation, and then to the law of trusts, were regarded by some as confusing, rather than enlightening.

In the preface of the book under review, the author has indicated that there is still a demand in many schools for a teaching vehicle in trusts, which follows the more formal method of presentation, a method by which the trust concepts and their application are set forth in logical sequence. In answer to the demand,

⁷ For example, see p. 803, fn. 25.

⁸ Oliphant, *The Future of Legal Education* (1928) 6 THE AMERICAN L. SCH. REV. 329, 332.

⁹ See note 8, *supra*.

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¹ See O'Toole, Book Reviews (1933) 7 ST. JOHN'S L. REV. 379, (1933) 8 *id.* at 217.

² See Baker, Book Review (1934) 47 HARV. L. REV. 904.