

St. John's Law Review

Volume 1
Number 1 *Volume 1, December 1926, Number 1*

Article 20

June 2014

Cases on Equity (Book Review)

George R. Holahan Jr.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

reviewer in his debt by most complimentary and flattering references to the reviewer's own work. Nevertheless, the reviewer insists that this is a fair critique of Mr. Jessup's book.

JULIUS HENRY COHEN.

CASES ON EQUITY. A one volume edition by Professor Cook of the Yale Law School.

With the evolution of the modern case book, one may well reflect whether the early English case has been dethroned from its lofty position in the world of legal education. It may not yet be a shattered idol, but the signs that it is tottering are many. It will always be with us as the rock upon which much of our law was buildd, but once supplanted by the modern case, it will no longer wield the masterful influence that it had in the past. It might be rash to say it has outlived its usefulness and it may be heretical to say that it quietly passed away with the last generation of law teachers, but if it has, who will there be to mourn at its bier? In its day it has received its meed of adulation from great teachers and great judges, and it has found its resting place in the case books of an earlier day. And perhaps it is just as well. Hoary with age, speaking in the hardly understandable tongue of centuries ago, part Latin of doubtful quality, part English, long obsolete, nearly always obscure in its meaning and facts, let it rest in peace with a tribute to its historical and cultural value. How could it be expected to resist the avalanche of decisions that have come down within the last century and a quarter? For so many of these have been phrased in clear, lucid language, oftentimes with some pretensions to literary style, with an ample statement of facts and frequently an exposition of the historical and philosophical significance of the point under discussion, that beside them many an early case appears like a curio of uncertain value. It may arouse a polite curiosity in the law student, or even perhaps amuse him, but as the vehicle of transmitting legal knowledge, it is interesting chiefly because of its respectable past. Equity and real property were its fertile fields. Was any case book on Equity complete that did not revel in cases decided centuries ago with modern cases interpolated here and there to give it the appearance of a well balanced book. But after all, this was quite in accord with the best traditions of the law teachers and quite consonant with their methods.

Professor Cook in the preface to one of his earlier volumes of cases on Equity suggests that the present generation of law teachers now treat their subjects in a different spirit from that of their elders, notably Keener and Ames. In those books he abandoned the historical method of approach which was so familiar to law students of a generation ago. He has continued the same plan in a one volume selection of Cases on Equity recently issued by him. The comparative advantage of Professor Cook's treatment of the subject as compared with the old order is so obvious that it needs no apologist. One of the younger men in the teaching of law, his earlier books indicate a definite and forceful purpose of breaking away from what has been the orthodox and eminently proper plan of preparing a selection of cases on equitable jurisprudence. There will be few or none to quarrel with him, for unless one is blind to the rapidly changing phases of the social and economical structure, he must realize that a present-day survey of any field of the law must embrace many situations and

many principles that are of modern development. In his latest book, Professor Cook presents a selection of cases that is intended for use in schools where the limitations of curriculum or time, do not permit the teaching of Equity throughout the entire course. Nevertheless, he has not sacrificed the important equitable titles and remedies in the accomplishment of his purpose. There are over three hundred cases reported at length and reference is made in the notes to more than that number. The notes are particularly complete and in many instances embody an excellent elaboration of the principles discussed in the principal case. His selection of cases from the decisions of the New York courts calls for something more than a casual reference from anyone who is at all familiar with the leading New York cases on equitable jurisprudence. In this instance he covers practically all the cases of note in their respective fields. There are included several cases, e.g., *Ryon v. Wannamaker*, which contain the last expression of the Court of Appeals on the particular subject under discussion. The entire work has the air of setting forth the law as it has been developed to the present time and the author does not scorn to use cases of recent decision.

GEORGE R. HOLAHAN, JR.

CASES ON LAW OF MORTGAGES. First Edition. By Lewis Parks. West Publishing Company. 1926. pp. 587.

The recent publication of Professor Parks' Cases on the "Law of Mortgages" comes as a welcome addition to the American Case Book Series, published by the West Publishing Company. The Commercial importance of mortgages is probably greater now, than it ever has been and the accompanying legal importance of the subject of mortgages necessarily follows.

Like the editor of a Digest, the compiler of a case book is confronted with the difficulty of placing cases under the proper legal heading. Professor Parks seems to have given much thought to this problem, with the result that the cases selected are found to be unusually well classified.

The cases included are 211 in number, of which 6 have been decided since 1920 and 17 between 1911 and 1920, inclusive. Although it cannot be assumed that recent law is the best law and that the late cases are the better considered cases, yet where the compiler's object is not fundamentally historical, it would seem that later cases should be given preference to older decisions, covering identical problems. For instance, the case of *Metzger v. Nova Realty Co.*, 214 N. Y. 26, decided in 1915, might well have been included either as a reported case or in the notes as being a more recent expression of the court on the question of the extension of time of payment of bond and mortgage by agreement between assignee thereof and the grantee of the mortgaged premises.

The notes found in the case book are most helpful in stimulating class discussion and encouraging individual research work. In no manner do they fall into the error of extracting principles and rules of law from the cases reported and relieving the students from the reading of the cases. Equally attractive are the references to the discussions in the various Law Reviews.

The order in which topics of a given subject shall be taught will always remain a mooted question as long as individuality forms, as it should, an