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Cases on Judicial Remedies (Book Review)

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CASES ON JUDICIAL REMEDIES. By Austin Wakeman Scott and Sidney Post Simpson. Cambridge, Mass.: Published by the Editors, 1938, pp. vii, 1301.

This book has been prepared for use in an introductory course in Procedural Law at the Harvard Law School.[1] The material is arranged under the titles of the Judicial System, Actions at Law, Suits in Equity and Unified Civil Procedure. In particular, these four divisions "deal with the development of the court system; procedure in actions at law, including forms of actions, common-law pleading and trial, and the enforcement and effect of judgments; the extraordinary legal remedies; the history of equity, equity pleading and trial, equity jurisdiction in tort and contract cases, and the enforcement and effect of equitable decrees; and an introduction to modern procedure and the elements of code pleading." [2] This lengthy topical statement may serve to suggest the scope of the book and the course based upon it, but a full appreciation comes only from a close examination of its contents.

The first two divisions deal not only with Common Law Actions and Pleadings, Trial and Appeal Practice, but also with the validity and effect of Judgments, Proceedings Against Property, Enforcement of Judgments and Extraordinary Legal Remedies. This material, comprising about one-half of the book, is substantially like that of Professor Scott's earlier case book on Civil Procedure,[3] except that Trespass, Case, and Trover form one functionally arranged group, and Covenant, Debt and Assumpsit, another. With this exception, however, "the general plan of the book is historical." [4] The other half of this work, consisting of historical and critical material on equity pleading and procedure, includes an excellent chapter on the Merger of Law and Equity (Part Four). The unusually generous inclusion of text material (much of it the products of the authors) and statutory material (*e.g.*, the Federal Rules of Procedure which appear throughout) and the meticulously prepared footnote citations (especially the references to the State Codes and the citation of legal periodicals) constitute other valuable features.

This is an important book. Its forthcoming, although not its authorship, was first announced in an article in the Harvard Law Review.[5] The fact that it was prepared as an integral part of the new curriculum at the Harvard Law School would alone warrant general consideration and review. But the considerable number of reviews which have recently appeared in legal periodicals offer additional and unqualified testimonial to its importance.[6] The sympathetic reception accorded this book has been characterized by the absence of the jaundiced-pen type of criticism. That this is a work of sound scholastic and technical achievement has been the unanimous opinion of the reviewers.

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[1] P. vii.

[2] *Ibid.*

[3] SCOTT, A SELECTION OF CASES AND OTHER AUTHORITIES ON CIVIL PROCEDURE IN ACTIONS AT LAW (1915).

[4] P. vii.

[5] Simpson, *The New Curriculum of the Harvard Law School* (1938) 51 HARV. L. REV. 965, 975, 976, 977, 981, 987.

[6] A partial list of the Reviews: Viesselman (1939) 27 CALIF. L. REV. 238; C. A. W. (1939) 17 CAN. B. R. 217; Clark (1939) 8 FORDHAM L. REV. 293; Green, Jr. (1939) 24 IOWA L. REV. 403; Ladd (1939) 33 ILL. L. REV. 489; Updike (1939) 16 N. Y. U. L. Q. REV. 331; O'Leary (1939) 14 NOTRE DAME LAWY. 227; Sayre (1939) 87 U. OF PA. L. REV. 629; Powell, Jr. (1939) 25 VA. L. REV. 639.

Adverse criticism, for the most part, is limited to an expression of the belief that there is included too much material and too many topics to be covered in a first-year law course. But the answer to this is found in the prefatorial statement by the authors, that the materials are more than sufficient for the usual first-year course in procedure and that some selection will be necessary.[7] As a first-year course, much of Trial Practice, Extraordinary Remedies and Code Pleading could be eliminated and given in advanced courses such as those offered in most of the New York law schools on the Civil Practice Act. The enforcement of decrees, and equitable execution could be understood better in a course in Equity, which, in the judgment of the authors, should follow in the second school year.[8] This sound position is strengthened by wise limitations which the authors place on the object of the book. Thus, a study of the past and the present is afforded which, in turn, insures a better understanding of procedure in the present, and, at the same time, serves to illuminate the courses in substantive law. The course, however, does not claim to prepare one for practice in any particular jurisdiction.

The only severe criticism is found in the scholarly critique of one of the acknowledged leaders of a different school of thought.[9] In a few provocative paragraphs, Dean Clark, now Judge Clark,[10] takes issue with the authors of the present work on philosophical grounds. Intent upon reform, Dean Clark suggests that an introductory course in procedure should be based exclusively and functionally upon the latest expression of procedural reform, that is, the Federal Rules of Civil Procedure. The issues raised are beyond the purview of this review. In passing, however, it may be noted that his criticism, based as it is upon his personal philosophy, arises largely from his desire that the spirit of law reform implicit in the new Federal Rules be furthered, and his fear that a course based on the historical approach may hamper the development of this "national uniform system of simple law administration." In studying Scott and Simpson's book, I find nothing which would in any way justify such a position. As Dean Clark, himself, points out, the authors have made full use of the new Federal Rules. Indeed, he even suggests that there is enough of such material to "remold it so as to fashion a course in modern procedure". There is nothing in the book to suggest that students would become enamored of anachronistic law, nor that they will regard pleading as *ars gratia artis.* Nor does it give any reasonable ground for the belief that students who use the book will not be devotees of proper law reform.

I have so much confidence in this book that I hope it will soon be introduced as a course in this school.

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[7] P. viii.

[8] Pp. viii, ix. Eliminating Equity as a separate course and giving "equitable procedure" as a part of a first-year course does not prove anything except that in reality the student gets a short course in Equity and very little procedure. Equity as a separate course is again being taught by name in places where a few years ago it was not a separate course. See (1939) 87 U. OF PA. L. REV. 250, 251.

[9] Clark, Book Review (1939) 8 FORDHAM L. REV. 293.

[10] Charles E. Clark, Dean of Yale Law School, was appointed Federal Circuit Judge for Second Circuit on March 11, 1939.

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