

A Treatise on Equity (Book Review)

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A TREATISE ON EQUITY. By William F. Walsh. Chicago: Callaghan and Company, 1930, pp. xli, 603.

In Professor Walsh's treatise on Equity a perplexed teacher of the law may find the answer to the inquiring student who wishes to know of a "good text," especially if the student is studying under the case system. Within the somewhat narrow compass of 603 pages, the author has succeeded in circumscribing the main principles of Equity. There are many important and special topics not treated extensively, but the answer to most of them is at least suggested. To this end Professor Walsh has drawn quite liberally from both modern and early writers. The footnotes are liberal and very full; the citations of cases furnish a good-sized collection of the leading cases in all jurisdictions. In addition, the footnotes are enriched by references to many articles from law reviews and other legal periodicals, some of which have been resurrected to great advantage.

The arrangement of the book is logical and somewhat orthodox. After the usual opening chapters on the history and nature of Equity, both before and since Chancery, are found chapters dealing with the nature and extent of the more recent merger of Equity and Law. The next part of the book has to do with equitable relief in tort cases; Part Third deals with equitable relief in contract cases, and the last part treats of equitable relief in certain miscellaneous cases and in fraud and mistake. The above arrangement of subjects is a common one but this book may be distinguished because of the approach and method of treatment of the entire subject matter—namely, from the standpoint of the merger of the two systems of Law and Equity.

Over thirty years ago Justice Holmes pointed out that in its beginning in England, Equity was in reality a part of the Common Law as we find it about the time of Henry II, and later, due to the fixity and rigidity of the Common Law writes it apparently disappeared from the Common Law, and still later, how it reappeared, being administered in Chancery as a separate system.

In 1615 Lord Chancellor Ellesmere, in the Earl of Oxford's case, wrote: "And for the Judgment, Law and Equity are distinct, both in the Courts, their Judges, and Rules of Justice; and yet they both aim at one and the same end, which is, to do right; as Justice and Mercy differ in their effects and operation, yet both join in the manifestation of God's Glory."

In 1920 the New York Court of Appeals, by Andrews, J., in *Saperstein v. Mechanics' and Farmers' Savings Bank*, 228 N. Y. 257, in an action for specific performance, which was denied, wrote: "If, however, in addition to the equitable cause of action the facts as stated give rise to a legal liability, then there should be no dismissal; the action remains to be tried."

Professor Walsh has undertaken, not only to explain how Equity, both from the standpoint of procedure and principle, has become integrated with the Common Law so as to form a continuity of law and remedy, but also to point out how the systems, as merged, function.

The first forty pages outline the history of Equity, which, together with the many footnotes and references therein, furnish material for the proper introduction to this subject in the time usually allowed in law schools. The nature of Equity as a system of remedies, together with the nature of the decrees and how they are enforced, fills the next eighty-two pages. His discussion of the

power of Equity to act *in rem* is excellent as is also the treatment of the remedies in certain tort cases, especially waste, trespass and nuisance.

We wish that Professor Walsh had discussed more in detail some of the later cases having to do with injunctions in defamation cases. In a rapidly changing civilization the powers of a court of Equity are frequently invoked to give relief against what might be termed anti-social acts not amounting to crimes, oftentimes trivial, but occasionally important. A recent volume of supplementary cases to Chafee's Cases on Equitable Relief Against Torts contains many such situations.

Professor Walsh does not hesitate to take a stand and, where he finds himself in disagreement with decisions or principles, he is ever ready to point out what he believes to be the correct rule.

The chapters on equitable relief in contract cases are quite complete and very valuable, especially those dealing with the vendor-purchaser relation. On the other hand, the subject of Equitable Assignments is not discussed at all. Also, is it an exact statement of the rule in New York that "a contract in writing is only enforceable against the party who signs it, under the Statute of Frauds, and not enforceable against the other who did not," and, as in the next line, "this has continued to be unbroken law ever since"? The above is found in section 69 under the title "Mutuality in Specific Performance."

It is suggested that the case of 300 West End Avenue v. Warner, 250 N. Y. 221, holds that the vendor's signature is not necessary, provided it can be shown that the purchaser indicated his assent to the transaction.

In Part IV the treatment of fraud in Equity is very helpful, as are also the citations and footnotes. We would like to have had more, however, on the subject of accident. We feel that this could have been properly incorporated in Part IV.

For the practitioner a reading of this book should stimulate him to the possibilities of equitable remedies, and, as for the student, the best test is the apparent result gained from the use of the book. We find that students who seriously study the sections assigned to them in this book benefit greatly thereby, and so we are pleased with the book and feel that Professor Walsh has given us a valuable work.

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BANKRUPTCY LAW AND PROCEDURE. By Joseph G. M. Browne. Brooklyn, N. Y.: Federal Publications, 1930, pp. 273.

Recently investigations relative to the operation of the Bankruptcy Law occupied the front page of our daily newspapers. Efforts were made to ascertain the underlying causes of bankruptcies and to find a method of curtailing the tremendous losses sustained by business men throughout the country. Commenting on the question as to who assumes eventually such burden, one writer