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Cases on Equity Jurisdiction and Specific Performance (Book Review)

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Books of this kind deserve the utmost severity of criticism. They simply darken counsel. Fortunately they are not read much except by those who are already persuaded. They should be filed by libraries under "Sermons" rather than "Treatises."

A. G. KELLER.

Yale University.

CASES ON EQUITY JURISDICTION AND SPECIFIC PERFORMANCE. Two volumes. By Zechariah Chafee, Jr. and Sidney Post Simpson. Cambridge: Published by the Editors, 1934, pp. xiii, 1-870; vi, 871-1619.

Whether equity should be taught in a separate course is a problem worthy of a thesis. The questions involved have caused considerable disagreement. Maitland regarded it as supplementary law, a sort of appendix to, or gloss around, the Code; the substantive principles, except trusts, to be studied with the law of real and personal property, contracts and torts.¹ In accordance with these views, but not necessarily because of them, one notable curriculum places specific performance and injunction against tort in the last half of a first-year course in procedure; mistake, reformation (rectification), etc. in advanced contracts; vendor and purchaser, in a separate course.² Holdsworth, however, maintains that an understanding of the principles "will never be acquired if equity is studied in snippets." Chafee and Simpson evidently belong "to those cautious and conservative folk who cling to the tradition of equity as a separate subject,"³ for they do not believe "that the day of the separate equity course is over" and do believe that a thorough understanding of equity can be best attained by a historical—a genetic—approach best made through a course devoted to equity as such.⁴

As a natural sequence to this belief, the general plan of the book follows Dean Ames' *Cases in Equity Jurisdiction*. The subject matter of the two volumes deals with the nature of Equity Jurisdiction (Part One, 243 pages) and Specific Performance of Contracts (Part Two, 1233 pages). The vast amount of material used in an exhaustive treatment of these topics requires 1475 pages as against 441 pages for the same topics in Chapters I and II of Ames. The technique of arrangement is new, interesting, and stimulating. The principle cases (which are less than fifty per cent of the book and contain late, significant decisions as well as about sixty per cent of the cases in Ames) are followed

¹ MAITLAND, *LECTURES ON EQUITY*, 18-22 (1909).

² See Catalogue Columbia Law School, 1934-1935. See, The place of equity in a curriculum of jurisprudence, HANBURY, *ESSAYS IN EQUITY*. Chafee, Book Review (1935) 48 HARV. L. REV. 523.

³ See Book Review, CLARK, *CASES ON PLEADING AND PROCEDURE*, ONE VOLUME EDITION, E. M. Morgan (1934) 48 HARV. L. REV. 366, 368. This interesting characterization reflects a current mental attitude of the functional approach obsession.

⁴ Page x. See also Book Review, CLARK, *CASES ON PLEADING AND PROCEDURE*: Vol. II, Prashker (1933) 7 ST. JOHN'S L. REV. 380.

by editor's notes, which analyze the principles and give further authorities, and these are followed by problems usually containing pertinent citations. Interspersed in the footnotes, author's notes, and problems, are statutes, exhaustive law review citations, and a multitude of citations of supporting cases. (The book contains some 15,000 case citations.) The insertion of pictures of eminent jurists, litigants, and places involved in litigation, is a refreshing innovation. Mention should also be made of the carefully prepared tables found in the final 142 pages. These include a very thorough index and analytical table of contents.⁵ Practicing lawyers should welcome these volumes as they provide more materials for case finding than the current treatises and digests on the subject matter covered—and to make these available, the analytical table of contents and index is especially valuable.

New arrangements and classifications of material which have dismantled equity as a separate course are undoubtedly well intended. As an example, the problems of part performance in Statute of Frauds cases are largely those of pleading and evidence. The student appears to have a better grasp of the entire subject when it is approached from that angle, but it is submitted equity is more than a system of remedies. There are fundamental legal relations between parties to a contract and the ownership of property, which concepts involve equitable principles and are matters of substantive law, and cannot be done away with by new arrangements of material. These concepts are too many and important to be regarded as mere "equitable appendages"⁶ to the substantive law of contract and property. Among these enduring and permanent problems of the law are to be found the formidable and difficult concepts involved in equitable interests as property. (Of course, remedies play an important part.) Throughout the book under review, case material, numerous editor's notes, problems, and questions point out the clash between contract and property in equitable interests, especially so in cases having to do with the extra-territorial effect of decrees, rights of third parties, and equitable servitudes.⁷

In teaching and studying equity, or any other legal subject for that matter,

⁵ Pp. 1477-1619.

⁶ See Book Review, CLARK, CASES ON PLEADING AND PROCEDURE, M. T. Van Hecke (1933) 47 HARV. L. REV. 370, 371.

⁷ Some of these are: *Fall v. Eastin* (dissenting opinion) p. 134; Note on Restrictions on Assignments by the Purchaser, p. 651; Note on Transfer of Land Under Option, p. 677; Problem 4, p. 682; *In re Nisbet and Potts Contract*, p. 728; Whether Transfer of Equitable Interest Is Within Statute of Frauds, p. 1056; Note on Statute of Frauds and Restrictions, p. 750; Excerpt from *Bristol v. Woodward*, 251 N. Y. 289, 167 N. E. 441 (1929), Cardozo, J.; Problem Cases, p. 755.

The entire subject of equitable servitudes is, of course, concerned with "this battlefield of the law." Among the law review articles, pro and con, and they are all cited and referred to in their proper setting, is *Equitable Servitudes on Chattels* (1928) 41 HARV. L. REV. 945. In this article Professor Chafee explores (with inquiring mind) the economic and social desirability and legal possibilities of extending by analogy the rule in *Tulk v. Moxley*, and other cases of that type, to chattels. In the book under review, the editors have included *National Skee-Ball Co, Inc. v. Seyfried*, 110 N. J. Eq. 18, 158 Atl. 736 (1932), a late and significant case in which the court refuses to do so, citing the above article. The problem involved was not one of procedure.

one cannot but desire to see the law in action. The union of law and equity, as far as it has been affected by the so-called merger, should be presented to the student, as far as possible, in a course in equity. It is felt that he should benefit by his course in procedure, and one course should supplement the other in developing equitable remedies and powers. Whether or not the material on arbitration and appraisal should be included in a course in equity again raises the troublesome question of whether or not the demands of the subject require that it should be treated in a course in procedure. We believe that the equitable remedies involved should be studied in a course in equity. The material might be cut down and more material inserted on merger of law and equity under codes. After all, the approach may be determined by the mental attitude of the teacher. If we are capable of teaching law "in the grand manner," in accordance with the admonition of Holmes, here is a book built in that spirit which can be used to achieve that end; and if, in the becoming process, a student masters this book, he has made a distinct advance to that farther goal—a finished lawyer.

As stated before, all lawyers should have and use this book. It should be on the study desk of every teacher of equity. Whether it can be used for class instruction, depends upon many things. If the course in equity is confined to thirty-two hour lectures, the book contains too much material, is too specialized, and in parts very difficult. If, on the other hand, this book was intended, as apparently it is, to cover the first-year course in equity, and the teacher is allowed the privilege of giving equity for the second year, in which he can treat equitable remedies against tort, bills of peace, *quia timet*, and other topics usually found in the course in equity, then this book can be highly recommended for class use in the first year.

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CONTEMPT OF COURT IN LABOR INJUNCTION CASES. By C. O. Swayzee. New York: Columbia University Press, 1935, pp. 145.

This monograph, frankly following in part the path blazed by Frankfurter and Greene in "The Labor Injunction," presents a careful study of the device of contempt of court as applied in labor injunction cases. The volume contains much valuable statistical data and, for the first time, collects a large part of the mass of "unreported" New York authorities in this field of the law. It is a painstaking compilation of the empirical data available in our leading industrial state, and it analyzes the material in scholarly fashion. Having been written immediately prior to the enactment of Chapters 298 and 299 of the 1935 Laws of New York amending the Civil Practice Act, the Penal Law and the Judiciary Law, in relation to contempts in cases involving or growing out of labor disputes (which carry into effect some of the suggested changes in the law made by the author), this book serves as a valuable summary of the law up to this turning point.