

CASES ON EQUITY. By Henry L. McClintock.<sup>1</sup> St. Paul: West Publishing Co., 1936. Pp. xxiv, 1286. \$6.00.

THOSE WHO have found dissatisfaction with some of the recent trends either in the composition of casebooks or the treatment of Equity in the law school curriculum, will take great comfort in this book. Its style is the soul of good form, its content offends no convention. It is designed for use in two full year courses of two hours a week. It covers virtually the whole field ordinarily thought of as equity—roughly the same field covered in the one volume edition of Mr. Cook's casebook,<sup>2</sup> but with somewhat different grouping of material and perhaps more emphasis on procedure.

The first 559 pages are devoted to a General Survey of Equity, the remainder to Equitable Protection of Particular Interests. Chapter one contains interesting and well chosen historical material. Then follows a chapter of over 200 pages on the Nature of Equitable Relief. This treats such things as parties, pleading, kinds of relief, the consequences of the notion that equity acts in personam, the place and limit of discretion, and the fusion of law and equity. Lack of equity jurisdiction is then distinguished from a court's want of power, and the manner of raising the former defect is dealt with. The next chapter explores the requirement of inadequacy of legal remedy. There follows a consideration of incidental or substituted legal relief, interpleader, bills of peace, bills quia timet, discovery and the perpetuation of testimony.

The subjects of the first part of Book Two are specific performance, rescission, and reformation of contracts. The second part, entitled Property, includes such matters as equitable conversion of land by contract, equitable liens and servitudes, the prevention of injury to property (real, personal, intangible) through tortious conduct, and quieting title. The two remaining parts are short, taking up the protection of personal interests and public interests (injunction against crime, etc.) respectively.

There is little unanimity of opinion as to whether a casebook editor should try to be selective or exhaustive in presenting his material; witness the divergent reactions to the monumental work of Messrs. Chafee and Simpson.<sup>3</sup> No one could doubt to which of the warring camps the present editor belongs. He says in his preface: "The value of the case method of study of law is lost unless the casebook contains for each case enough of the facts and of the reasoning of the court to enable the student to see the problem as the court saw it and to understand the process by which the court reached its conclusion, so far as that process is revealed in the opinion. When the required number of cases is so presented, there is very little room for anything else. That limited space has been mainly devoted to problems which illustrate the application of the principles already considered to different facts, and to footnotes which have been devoted mainly to the citation of law review material, because of a belief that such material is the most valuable commentary on the cases and is also the least accessible." And indeed there

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  2. COOK, CASES ON EQUITY (2d ed. 1932).
  3. CHAFEE AND SIMPSON, CASES ON EQUITY (1934).

is very little of "anything else" beside cases: A few historical selections from texts, a few of the Federal Equity Rules, a very few statutes, (of all the foregoing not more than a dozen or so pages), footnotes, and problems comprise the lot. The editor has fairly described his footnotes—and seldom do they go far afield into collateral questions. The problems follow each section. There are usually about four or five of them, and they consist in a short statement of facts taken from an actual case (cited after each problem) and end with a question as to the holding. Like the footnotes the problems stick pretty closely to the material which has preceded them. There are no explanatory or introductory parts in the text, very few in the footnotes. A reasonably industrious student would be well able to cover all the material cited in the footnotes and problems without devoting an undue amount of time to the Equity course.

The cases themselves are well chosen and edited. Many recent ones appear—a lot of them decided in this decade. Further, the cases are arranged according to patterns which it is easy to follow—even without resort to the editor's recently published textbook on Equity.<sup>4</sup> Its almost severe simplicity of design and execution will commend this casebook to those who agree with the notions of Mr. Chafee and Mr. Simpson about a separate place for equity in the curriculum, yet are awed by the ambitious proportions of their excellent work with its inevitably great demands upon a teacher. For my part I came to this task predisposed to favor the fusion of law and equity in the law schools as well as in practice. In the light, it may be, of my predisposition, I find aid and comfort for my view in the present very adequate application of the opposing one. The editor says:<sup>5</sup> "Courts, even in code states, are still drawing the line between actions at law and suits in equity, and our students must be prepared to practice before such courts . . . Whether the application of [equitable] principles to the various divisions of the law is to be taught in connection with the common-law rules applicable to the same field, or in a separate course in equity, is not of great importance, but it can hardly be doubted that the principles themselves ought to be taught, before an attempt is made to apply them." That the material should be taught is clear. But it is all taught—and incidentally almost every one of the component parts is given at least as much attention—in the Yale Law School, where there is no separate course on Equity.

The grouping of the material in the present book seems to me, moreover, to have certain defects. It does not present problems in the way they actually appear to the modern practitioner, judge, or law reformer. True, the ancient dualism has left its mark—perhaps indelibly—on our legal system. But no common thread binds its various manifestations today—at least in the code states. One will have many an occasion in practice to think of equitable doctrines, but it will be as a part of such problems as the availability of jury trial, the joinder of parties and causes, the appropriateness of certain forms of relief, or the existence of certain legal relations in various connections scattered over the whole field of the substantive law. And the equitable aspect

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4. McCLINTOCK, *EQUITY* (1936).

5. P. v.

will be only one phase of larger problems, so that the mental habits and trains of association inculcated by a separate treatment of equity will cut through the most fruitful ways of thinking about them. The training is horizontal, so to speak, while the approach to actual cases will perforce be vertical. There is much in the first book, for instance, that bears on the question of joinder of causes and parties, but it must be culled from under a number of variant headings, such as Equitable Procedure, Incidental or Substituted Legal Relief, Bills of Peace, where its really significant implications for the practitioner are not always even suggested. On the other hand there is no mention of the early code provisions as to joinder, no indication of their debt to equity or of how the old distinctions were invoked to defeat the intent of the codifiers so manifest in the light of the former practice, no recounting of the way the more modern provisions reflect the scope given by liberal courts to bills of peace. Later courses grooved to present day problems may, to be sure, gather up appropriate loose ends, recapitulate, tie them together, lend them an historical continuity and a unity in terms of existing institutions. But the duplication which would be involved is regrettable. Nor does it seem to be offset by the possibility of schooling another generation of lawyers in the caste of thought which bred the "cold, not to say inhuman, treatment which the infant Code received from the New York judges."

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A TREATISE ON THE TAXING POWER, WITH PARTICULAR APPLICATION TO THE STATE INCOME TAX. By Walter K. Tuller.<sup>1</sup> Chicago: Callaghan & Co., 1937. Pp. xvii, 460. \$8.00.

THIS IS no ordinary manual from which lawyers may discover how to advise their clients to keep their taxes down. Nor is it a study of the decided cases made merely for the purpose of drawing forth general principles and of indicating the probable course of decisions. Mr. Tuller has written with strong feeling to establish a thesis. The thesis is that the income tax laws of almost all the states are void under the Fourteenth Amendment because they tax income from sources outside the state, because they do not permit proper deductions, and because they tax at graduated rates. The author seeks to prove the soundness of his views by a series of propositions: An income tax is a tax on the source from which the income is derived. To the extent that the income taxed is derived from property, the income tax is a property tax; and the right to conduct a lawful business or profession is a property right as much as the right to receive income from tangible or intangible property. Since no state may tax property outside its jurisdiction, the state may not tax income from such property. And since

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