

Book Reviews

CASES ON EQUITY, by *Zechariah Chafee, Jr.*, and *Sidney Post Simpson*. Published by the Editors, Cambridge, 1934. Pp. xiii, 1619.

The publication of these two volumes is an event whose importance has been heralded and anticipated for the past two years—mainly through the issuance from time to time of generous portions of the work as it progressed in pamphlet form. The foreshadowing of the event, however, has not in any way dulled its significance. Indeed, viewed now as a completed work, these volumes reveal both in their architectural contour as well as in their detailed content innovations that are much more profound in their import to the law teaching profession than the advance fragments had previously indicated. The briefest glance at these books will suffice to show that these are not just the ordinary type of case-books that in recent years have—with one or two notable exceptions¹—constituted the only rivals that the almanacs have had for unimiginative regularity and consistent monotony. Though, truth to tell, the three-word official title on the back of these two volumes—whether due to the authors' modesty or, what is more probable, the market's demand—does its best to belie the fact that the work is anything but just that kind of a case-book. It is decidedly *different*—different in a great many ways, each of which deserves thorough and critical discussion. The limitations of a review, however, prohibit comment on more than three of these.

The first is one which most reviewers will probably find of least significance, though recognizing its novelty: the books have pictures in them! Portraits of English Chancellors, American jurists, the parties involved in *Lumley v. Wagner*, and even a photograph of the Salton Sea! Now, the present reviewer may be prejudiced in favor of books that have pictures in them—a prejudice that undoubtedly goes back to his Mother Goose years. But the fact remains that he has today a more vivid recollection of the stories he read years ago in an illustrated edition of the "Arabian Nights" than he has of many a more exciting book without illustrations that was read in the same period. Why the psychology of visual menmonics should stop with childhood—when, as all will agree, the remembering power requires less artificial aids than in later years—the present reviewer has never been able to comprehend. Granted that as the mind matures the analytical power takes over much of the work previously thrown on the memory, surely in a field like law where the roots of the past far outnumber the buds of today, where the chances of success in predicting the outcome of a case lie much more with the augurs who know their "precedents" than with those who know their logic, the virtues of memorization is not to be pooh-poohed. But, even apart from this utilitarian consideration, it seems to the reviewer that a judicious use of photographic material can well serve to furnish the little human interest which no normal law student is either too old or too cynical to look for as he plods through some of the

¹ E. g., Powell, "Cases and Materials on Trusts and Estates" (1933).

dreary wastes that lie between Blackacre and Commencement Day. The braceleted ankles of the dancers of Bagdad may be a little prettier to look at than the operatic bust of Johanna Wagner. Both, however, share equally the virtue of being *personal*—as personal as the remedy in Equity!

A second striking feature of the work is the extraordinary wealth of material that the editors have included to adumbrate their full-length cases. A rough estimate shows that not more than about one-half of the total contents is devoted to such cases. The rest is an amazingly comprehensive and scholarly mélange of editorial comments, extracts from opinions and other legal literature, footnote references to cases, and a host of illustrative problems based usually on the facts involved in reported cases. In this respect, the work is a veritable encyclopedia of information, surpassing by far any of the few recent case-books that have striven in the same direction. The question will inevitably arise, however, as to whether all or even a major portion of this "helpful material" can be digested in a first course in equity, to be given, as the editors suggest, "in the second year or the latter part of the first year of the law school course, and occupying not less than sixty class-room hours." Even making allowances for the omissions that are normally to be expected in the handling of any case-book in the class-room, the writer fears that not even twice sixty class-room hours would suffice to cover the materials of this work in any degree that will meet the expectations of its ambitious editors. On the other hand, to expend the time allotted to Equity in the law school curriculum so as to permit adequate treatment of the quantum of materials provided by the editors is highly questionable—especially in view of the fact that many of the topics treated extensively by the editors are ordinarily handled with equal if not greater emphasis in other courses; e. g., the enforcement of collective labor agreements, arbitration contracts, the Statute of Frauds, etc.

But all the more is the cornucopian richness of these volumes to be regretted when it is observed that territorially they cover only a good-sized fragment of the field ordinarily included even in a first course in Equity. This third feature of the work is the one that will probably be the subject of most of the causerie among teachers of equity. The editors have deliberately limited their scope, as the sub-title indicates, to "Jurisdiction and Specific Performance." In so doing they have adopted the approach to Equity that was introduced by Dean Ames in his long-used "Equity Jurisdiction," published in 1904. The arrangement as well as much of the selection of cases follows the lines drawn by Ames. The main difference—and that a most crucial one—lies in the point at which they stop. Whereas Ames devoted only his first two chapters covering a little over 400 pages to the nature of equity jurisdiction and the specific performance of contracts, and then went on for six more chapters covering over 500 pages, before concluding his work, the present authors have contented themselves with the subject-matter of the first two chapters only. Apart from the inexplicable misnomer that must therefore be charged against the editors in allowing their work to be published under the broad title "Cases in Equity," it will be seen that these volumes could hardly be adopted for practical use by the

teacher of a first course in equity unless he agrees with the editors in their rather startling theory that such a course need not include—except perhaps incidentally—such topics as injunction against tort, protection of rights of personality, bills of interpleader, bills *quia timet*, etc. This theory derives apparently from the editors' feeling that the basic quality of equity jurisdiction lies in the power to act specifically and *in personam*, that a thorough understanding of that power is the prime and all-inclusive purpose of a basic course in equity, and that, finally, such an understanding can be sufficiently as well as most effectively attained by a genetic study of the development of the remedy offered in the Chancellor's court together with an intensive study of the special use of that remedy in the field of contract. With the first two of these propositions one cannot quarrel. The third, however, cannot pass without serious challenge.

The present reviewer does not claim to be an old hen either in the practice or the teaching of equity. What little experience he has had in both, however, convinces him that the theory of Messrs. Chafee and Simpson, at least as it is implied in the limitation adopted by them, is emphatically wrong. In the first place, from the point of view of interest for the student, the reviewer has found that the subject-matter of specific performance of contract is far less stimulating than the vast and exciting field of injunction against threatened wrongs apart from breach of contract. In the second place, the reviewer finds it hard to believe that in the current practice of law the cases involving specific performance as a contemplated remedy are so numerous that they should be singled out as the wellsprings from which to drink and appreciate the waters of equity as these waters are used today—not as they may have been used in the time of Lord Ellesmere. But, more than all, the present reviewer simply cannot see the wisdom of letting students go through a full basic course in equity without ever having handled such star-cases as *Richards v. Dower*, *Gee v. Pritchard*, *Emack v. Kane*, *Carleton v. Rugg*, *Commonwealth v. McGovern*, *Tribette v. Illinois Central Ry. Co.*, and many others that are either wholly omitted from the present work or relegated to an inconspicuous footnote. It may be that such cases are treated with particularity in subsequent advanced courses in Equity in the Harvard curriculum. The reviewer believes, however, that to cut them off from a basic course in equity is to commit something akin to mayhem.

Despite the above strictures, however, it is to be repeated that the publication of this work is an event of first-rank importance. It is certain to give a "push" to the art as well as the science of legal pedagogy.

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FILOSOFÍA JURÍDICA CONTEMPORÁNEA, by *E. F. Camus*, of the University of Havana, with a Prologue by Hans Kelsen, of the University of Cologne. Havana: Jesus Montero, Editor, 1932. Pp. 198.

In Latin countries legal philosophy is an important subject, both in the law schools and in the courts. This book attempts to represent a modern