The contributions of Dr. Glueck and other leaders, and their emphasis on the scientific aspects of the problem, constitute a valuable addition to the literature in this field.

JOHN P. McGORITY*


The most challenging fact about the second volume of Dean Clark's "Cases on Pleading and Procedure," just published, and the fact to which this reviewer frankly will devote the bulk of his attention, is that the first half of it consists of what would some time have been called a course on "Equity." It is not so called in Dean Clark's work; his Book 5, three hundred and eighty seven pages long, is called "Specific Reparation or Preventive Relief." Book 4 of his first volume, however, is called "Equity." Its three chapters deal with "Early Development of Equity," "The Union of Law and Equity under Modern Codes," and "Equitable Decrees—Enforcement and Effect." Taking the two volumes together we find, somewhere near the middle, nearly six hundred consecutive pages of material which is roughly interchangeable with the first nine hundred pages of Cook's (one-volume) Cases on Equity, or the first seven hundred pages of Durfee's Cases on Equity. The editor contemplates, judging from the preface, that there will be separate courses on Equity Three and Vendor and Purchaser; otherwise the materials here (including those in the first volume) are to take care of the student's study of Equity.

This is challenging, of course, because it raises and purports to give a new answer to the question: What to do with Equity? It is the "Union of Law and Equity under Modern Codes," that has caused all the difficulty. If it (the "union" that is, or, as some prefer to say, the "fusion") were complete, the problem would hardly exist; so, too, if it had never been attempted. But it is the fusion that is still going on—still, if one may be permitted the expression, in the process of fusing, and doing it spottily, jerkily and obscurely—that is, and well may be, so perplexing to judges and editors of case books. And the perplexity of editors is the greater. The judge is asked to grant specific performance, not to define or classify it; the editor has to decide what "subject" it belongs to—"Equity," "Contracts," or "Procedure."

It has been our conventional teaching practice to solve the difficulty by looking backward and treating Equity as it was. Ames' classic case book did so; it dealt little with any fusion. Lately, the tendency has been the other way. Cook's familiar Volume Three deals with "Reformation, Rescission, and Restitution at Law and in Equity." Handler's interesting new casebook on Vendor and Purchaser treats the litigation aris-

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1 These comparisons are not meant to be anything but hasty approximations and to give those not familiar with Dean Clark's book some idea of its scope. Taken so, they are not unfair, it is believed, to any of the works mentioned.

2 As defined, for example, by the third volume of Cook's Cases on Equity.

3 As defined, perhaps, by Professor Handler's new casebook on the subject.
ing from land contracts and transfers, be it legal or equitable. One may not unreasonably infer that these books affirm their editors’ belief in fusion as a fact accomplished. In some schools, the reviewer understands, the matter is not left to inference; Equity drops out of the curriculum, the subject of Torts includes injunctive as well as legal relief, and the subject of Contracts deals impartially with assumpsit and specific performance.4

This modern tendency seems both reasonable and inevitable; care must nevertheless be taken not to go too fast or too far. That a synthesis is logical or up to date does not necessarily make it teachable. Even a book now so standard as Cook’s Volume Three presents great teaching difficulties. The child has the sins of both parents, plus some of its own. The difficulties can be overcome; there are advantages that make the effort worth-while. The danger remains that we may, as teachers, in attempting to force on our students a synthesis too subtle, too compendious, or too different from that prevalent in the courts, fail to teach anything at all. The conventional, old-fashioned course in Equity, as exemplified by Ames’ cases and its modern counterparts, was and is highly teachable. Portions of it have been broken off when it seemed they might desirably be fitted in elsewhere. If this process stands the pragmatic test, it is a good one. Cook’s Volume Three has stood it, in the opinion of many. The reviewer guesses that Handler’s cases on Vendor and Purchaser will stand it. The process should and doubtless will go on in this cautious, trial-and-error way; it seems a better one than that of breaking up the old structure first, and then trying to do something with the pieces.

If these assumptions be sound, it remains to consider Dean Clark’s work in the light of them. He has not, on the surface, adopted either the conventional point of view or what has been referred to above as the recent tendency. He proposes, it seems, a trend or technique of his own. It might be rationalized thus: equity is largely a matter of remedies; remedies are matter of procedure; therefore equity is procedure. If this is nowhere made explicit, it must be implicit in the facts of the case: that he has put the equity materials into a casebook on “Pleading and Procedure.” But are the equity materials pleading and procedure? It would be beside the point to try to define these terms here; doubtless no definition of them could be made that would satisfy the maker. The problem, anyway, is not one of definition. An illustration does better; consider the title of section 6 of chapter 18: “Discretion—Balancing of Equities.” No one familiar with that subject matter could suppose it has to do with Pleading and Procedure as those terms are ordinarily used. Dean Clark seems in a sense to recognize this in his preface. “The first volume,” he says, “dealt with the pleadings in actions involving . . . .” and so on. But the “present volume contains materials concerning the granting of specific remedies.” The italics are by the reviewer; the difference between pleadings and materials concerning is significant. And for the equity cases (Book 5) he has a separate chapter (19) on “Procedure.”

Conceding, for the sake of the argument, that the equity materials are properly a part of the subject of Pleading and Procedure, they have not here been made a part of it in fact. There is no integration, no fusion. The equity materials remain as an undigested lump; the only cohesion is that supplied by the binder. Dean Clark estimates

4 This is the practice at Northwestern University, if the reviewer correctly understands what Dean Green has told him. It is to be hoped that the materials used may soon be made generally available.
that "a minimum . . . of eight to ten classroom hours per week for a semester, divided perhaps so that half is given in the first year of law study, and half in the second year, will be found necessary for the subjects covered by the two volumes." This is the equivalent, in most law schools, of two large courses. Why not call one "Pleading and Procedure," the other "Equity"? Will not the subject matter of its own weight break into two such parts?

The reviewer fears to seem captious; he does not intend to be so. Every strikingly new departure must expect to meet the question: is this something better or just something new? Opinions must always differ; the reviewer frankly records his that Dean Clark has not brought us materially nearer a solution of what may be called "the equity problem." He has either started on a new tack up a blind alley, or simply put old wine into new bottles. This is mixing metaphors with a vengeance; the reviewer apologizes by coining a new aphorism: mixed casebooks breed mixed metaphors.

That the workmanship of the book is first-rate may be taken for granted; Dean Clark is not noted for any other kind of workmanship. The reviewer has used his first volume as an invaluable source of equity materials not elsewhere available. It seems likely that the second volume will prove equally invaluable. Cases have been selected with discrimination; the notes are frankly and blessedly informative. Not infrequently, the gist of some long-winded case is put in a brief paragraph. The editor seems to be approximating what may be the policy of the case book of the future: to include only such portions or aspects of a given case as are of real value for a definite purpose. Note, for example, the enormous amount of information relative to injunctions against crime compressed into some fifteen pages (177–192). Equally admirable for its combined brevity, aptness and completeness, is the treatment of mutuality, including Professor Corbin's valuable note from the Restatement of Contracts. Other instances might be cited.

These numerous and manifest merits will doubtless recommend the book to many who will not wholly subscribe to the theories implicit in its organization. And, who, after all, would care to sponsor theories to which all would subscribe?

PHILIP MECHER*


In the preface the author states, "Only those topics as are susceptible of case analysis have been treated by the case method; doctrines which are settled have been presented in informational text notes." If the book were designed for advanced students of law, for practitioners, for law instructors, or for judges this theory might be sound. They, presumably, have mastered the fundamentals of law and will understand the implications of text statements. This book, however, is a student's first book on conveyancing. In such a book the theory should not have a place.

First, Mr. Jerome Frank would probably question the assumption that legal doctrines are settled. Though one may reject the extreme view of Mr. Frank one must

6 Preface, vi.

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