

1935

Book Review: A Handbook of Equity, By Wendell Phillips Stafford

E. H. Hallows

Follow this and additional works at: <https://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

E. H. Hallows, *Book Review: A Handbook of Equity, By Wendell Phillips Stafford*, 19 Marq. L. Rev. 206 (1935).

Available at: <https://scholarship.law.marquette.edu/mulr/vol19/iss3/10>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

BOOK REVIEW

A Hand Book of Equity, By Wendell Phillips Stafford. Washington, D. C.: National Law Book Co., 1934. pp. ix+458. One Volume.

This book, the work of Justice Stafford, is influenced by the author's thirty-one years of service on the bench and his experience of some twenty-two years in teaching Equity. It is not these years of study and service that recommend the book, however. A book should be reviewed in the light of the purpose with which it was written. In the Author's Note it is stated: "This book has been written, not to take the place of the study of cases, but rather to stimulate such study by tempting the reader to explore the decisions, whether in the original fields or those storehouses, the books of selected cases, into which so much of their wealth has been garnered." Justice Stafford characterizes the book (page six): "The practitioner as well as the student has been kept in mind, and the aim has been to write not an exhaustive treatise, or a digest, but a handbook which may be kept at one's elbow to serve as guide or fingerpost, or to refresh the memory."

To the practitioner the book has little practical value except to recall some of the more fundamental principles of equity which are usually classified as those coming under the original jurisdiction of Equity. It does not by any means attempt to cover the entire field of Equity or those branches which have been customarily treated separately by practitioners, judges, and teachers. There is nothing of a treatise, text book, or digest about the work. While a great many cases are cited, they are used generally only by way of illustration. The style is not argumentative as is that of some recent legal texts. No personal theories are thrust upon the reader and yet the work is not clothed in the cold intellectualism that makes its pages impersonal and often times disinteresting. The book has grace of style and character. It is like a fireside chat with some one who has something to say and says it interestingly. It is because of this literary quality that the author will succeed in arousing the student to explore the vast field of case law.

The book is divided into eight parts. The first, and perhaps the best, deals with introductory matter. The suggestions on how to approach the study of law are most beneficial both to the student and to the practitioner. What better advice can be given than to beware of general statements? What better example than the quotation: "No generalization is altogether true—not even this one."? Does not a teacher of law forever live with this problem? Again, is not the conflict between reason and authority ever a reality in class? Of late there has been a tendency on the part of professors and law review writers to challenge everything and anything in the way of a judicial decision on the ground of reason or some theory of social justice. On the other hand the active practitioner is inclined to be too much wedded to authority. It makes little difference to him generally whether the case be rightly or wrongly decided if he thinks it is on all fours with his solution of the problem. How many courts, having timidly admitted that a case has been erroneously decided, have refused to overrule it on the theory that the decision has stood so long that it has become a rule of property? In the midst of such conflict what better advice can be given to both student and practitioner than (page twelve): "The learner should be like the well-bred hound sniffing around the offered bone, rather than like three-headed Cerberus, gaping for food from any quarter and quieted by any handful of mud that may be thrown into his gullet." The rest of this section deals briefly with

the distinction between strictly moral rights and wrongs and those which Equity protects, and with the origin and peculiarities of the court of chancery.

Part II covers the interests in real estate given protection by Equity. Under this division the usual cases on waste, trespass, nuisances, and easements are discussed. A short chapter on removing clouds on title is then followed by a treatment of the vendor-purchaser relationship. Such standard topics as Equitable Conversion, Part Performance, and the Statute of Frauds, Requisites of the Contract, Marketability, Mutuality, Part Performance with Compensation, and Equitable Servitudes are treated. The classification is not from the standpoint of the different types of remedies but rather from that of the incidents flowing from ownership of real property, and this approach is carried out in Part III in discussing rights in personal property.

In Part IV the author abandons the former approach and deals with specific performance of negative obligations. The subsequent parts deal with the following problems: Part V with the protection of the so-called business rights; Part VI with the defenses of fraud, accident and mistake, and of reformation and rescission of contracts; Part VII with bills of interpleader and bills of peace; and Part VIII with bills *quia timet*, bills of account, jurisdiction conferred by statute and the maxims.

One cannot agree with all the author's statements although he may be fascinated by the manner of expression. In the treatment of the doctrine of Equitable Conversion the analogy of the mortgagor-mortgagee relationship is unduly stressed. In explaining the doctrine in decisions many jurists have used the analogy; yet in the class room most students are more confused than helped by the analogy. After one has grasped the idea of the doctrine, reference to the mortgagor-mortgagee relationship or even to a trust relationship may be helpful.

The author is not always entirely accurate in the impression he conveys. In discussing the time when conversion takes place as applied to contracts containing options the impression is given that if the vendor dies before the exercise of the option the conversion relates back to the date of the vendor's death and consequently the purchase price goes to his personal representative. For this statement the author cites the one hundred and fifty-year-old case of *Lawes v. Bennett*. Incidentally the English court treated the conversion as relating back not only to the time of the death of the vendor but to the date of the instrument giving the option. The important point, however, is that the statement is not a correct exposition of the solution of the problem today. *Lawes v. Bennett* was followed reluctantly in England, and restricted to the precise facts involved. It has been queried whether the case is still law in England since *In re Marlay*.¹ While it is true the case was followed in some of the early decisions in this country, the later cases have expressly repudiated the doctrine holding that conversion takes place at the time of the exercise of the option and does not relate back.²

Many of the chapters give inadequate treatment of the problems involved. The chapters on Laches and Part Performance with Compensation are especially fragmentary. The treatment of Mutuality does not show that discerning quality of keen-edged intelligence that is displayed in the treatment of that difficult problem, the Balance of Convenience. There is a confusion between mutuality of obligation, remedy, and performance.

¹ [1915] 2 Ch. 264.

² *Smith v. Lowenstein*, 50 Ohio St. 346, 34 N.E. 159 (1893); *Rockland-Rockport Lime Co. v. Leary*, 203 N.Y. 469, 97 N.E. 43 (1911); *Estate of Bisbee*, 177 Wis. 77, 187 N.W. 653 (1922). See also, 50 A.L.R. 1322 (1927).

The majority of the cases selected for illustration are old although occasionally a recent case is cited. It is to be regretted that the author did not avail himself of the material contained in the Restatement of Contracts pertaining to Specific Performance. It is likewise regrettable that the author did not point out the branches of Equity that are fast developing today. Outside of the so-called business rights there is no treatment of the personal rights and especially of the right of privacy.

The book contains a table of British regnal years which is indispensable in tracing the origin and development of Equity, an excellent table of contents, and a table of cases in the front as well as the usual subject index in the back. There are no footnotes; what documentation there is is given in the body of the text.

While the book will be enjoyable reading for the lawyer and judge, its greatest value will be found in its use by the law student. It is essentially a book for one entering upon the mysteries of Equity jurisprudence and for him will fulfill the aims of its author.

E. H. HALLOWS.*

* Professor of Law, Marquette University Law School.