

Book Review of William W. Billson: "Equity in Its Relation to Common Law." (1917)

William W. Billson practiced law in Minnesota for forty-two years. Because of declining health, he moved to California in 1910. There he spent time in the Los Angeles Law Library studying the relation between equity and law. His efforts resulted in the publication in 1917 of a 234 page book titled "Equity in Its Relation to Common Law." The following review of Billson's book was published in the California Law Review, volume 6, pages 389-391 (July 1918):

"Mr. Billson's book is an argument in support of three propositions: first, that equitable relief has never been limited to the correction of procedural defects of the common law, but has been directed to the enforcement of a "superior morality;" second, that the moral deficiencies of the law, which equity corrected, often lay in its substantive principles; third, that equity is therefore not a system of supplementary remedies, but a body of substantive law, often "in conflict" with the common law. The second and third propositions are really corollaries of the first, which, in the preface, is stated as the primary thesis of the author. But their relations have not always been clearly recognized: courts of equity have themselves disclaimed any sweeping program of morality—curiously enough, Mr. Billson nowhere explicitly refers, even, to these innumerable disclaimers,—and many writers have denied the third proposition without denying the others. [footnote 1: Cf. the note on Professor Langdell's views, p. 13].

"At first blush it would seem unnecessary to write a book to establish Mr. Billson's propositions; that, in particular, the frequent denials of substantive "conflict" between law and equity could not be literally understood by students. But a reading of the book justifies it. If the sweeping assertions of Langdell and Maitland were

literally meant they were erroneous; if not, they are at least misleading. Any systematic effort to hasten or increase the fusion of the two portions of our law should be preceded by agreement as to their fundamental relations, and it is therefore well that the dicta in question should be challenged. Mr. Billson has confuted them in thorough manner, illustrating his contentions amply and interestingly with examples from many fields of equity. His statement (p. 61) of the reasons why the procedural element has been magnified undoubtedly contains much truth.

"'Equity acts upon the person' is, and always has been"—said Dean Ames—"the key to the mastery of equity." Mr. Billson would say, "That equity acts to enforce a higher morality than that of the common law (aided or hampered, as the case may be, by the rule 'equity acts upon the person,' p. 37) is the key to the history of equity."

"Mr. Billson's formula is on the whole true, and certainly the principle it expresses would be more fruitful if it could be freely developed. But courts of equity never were free to develop it except within the limitations imposed by the jealousy of the common law courts, their own ideas of morality involving property rights, and, above all, their enforcement of their decrees in personam. Again, in his desire to subordinate the procedural aspect of equity he seems sometimes to go astray, himself. His whole argument (pp. 75-92) that specific performance of a contract to convey land is not the cause, but the effect, of the fact that the right of the vendee is "real," is unsatisfactory. That any right, in law, is what courts will enforce, and therefore the result of, and in nature determined by, such enforcement, is implicit in the general argument of the book; but on this point the author

goes upon a theory of natural law, which elsewhere he expressly repudiates (p. 38, note). Langdell's criticism of *Hughes v. Morris* (pp. 12, 82) was sound.

“The whole book is stimulating, though the introductory chapters, comparing English and praetorian equity, are less firm and coherent than the rest; and there is not an obscure sentence in the volume. That other students may have anticipated Mr. Billson (in publication) as to one or many points seems truly of no importance. It is to be hoped that in another volume he may deal with all the principles of equitable relief (only three of which, out of nine, are adequately discussed in his present study) which are listed on pages 94-96.

“An even fuller history of legal interpretation, as affected by equity, than is given in chapter VI, and a far fuller utilization of American cases on all topics would be particularly desirable; and scores of minor points, barely referred to, cry out for fuller treatment. Above all, the very subject of the book seems to demand a clear and systematic discussion of the fusion of law and equity, yet there is none. When we are told in the first sentence of the book that "as a distinct jurisprudence English equity must be considered to have run substantially its unique course" (p. 3), and are afterwards told, very admirably, the qualities that characterize a legal system that is "well-matured" — evidently through the fusion of legal and equitable principles (p. 34), — is it possible that Mr. Billson means us to infer that in his opinion our law has reached such a fusion of "the logical and the ethical?" If not, then how far, in his opinion, has fusion gone; how far is it possible or desirable; and what are present tendencies, particularly in the decisions rendered by

American judges trained primarily in the common law? Are Dean Pound's opinions respecting "the decay of equity" [footnote 2: 5 Columbia Law Review, p. 20] accepted by Mr. Billson? We are greatly indebted to him for the present scholarly book, but a much more valuable one might still be written, doubtless, from his accumulated materials.

F. S. P.

Billson died on September 2, 1923. The following memorial to him was read at the annual convention of the Minnesota State Bar Association in 1924:

“WILLIAM WELDON BILLSON was born at Springfield, Illinois, on June 7, 1847. He was the son of Thomas and Hester (Watson) Billson. He attended the public schools of Springfield, Illinois, and graduated from the high school of that city in 1864. He was married to Alice L. Harford of Portland, Maine on the 20th day of November, 1872. Five children were born to them. One only, Harford L. Billson of Los Angeles, California, and his wife survive him.

“He was admitted to the Bar in the state of Minnesota in the year 1868, before becoming of age. This was made possible by the passage of a special act of the legislature of the state of Minnesota, being Chapter 129 of the Special Laws of 1868, authorizing his admission without regard to age upon passing the necessary examination.

“He practiced in Winona, Minnesota, from 1868 to 1870, removing to Duluth in the latter year.

“Mr. Billson was a member of the Minnesota State Senate in 1872, and again for two years from 1883 to 1885. He was United States District Attorney for the District of Minnesota from 1873 to 1881 under a Republican administration.

“In 1893 the law firm of Billson, Congdon & Dickinson was formed, consisting of Mr. Billson, the late Chester A. Congdon and the late Daniel A. Dickinson, for many years Associate Justice of the Supreme Court of the state of Minnesota. This partnership continued until 1902, when Judge Dickinson died, and from that time on, until 1910, the firm consisted of Mr. Billson and Mr. Congdon. In 1910 Mr. Billson retired from the actual practice of law, owing to ill health, and for many years spent his winters in Los Angeles, California, and his summers in Duluth. His health became such, however, a few years before his death, that he was not able to return to Duluth in the summer, spending all his time in Los Angeles. He died on the 2nd day of September, 1923, at Los Angeles, California.

“While Mr. Billson's formal schooling terminated at an early age, he remained a scholar and student all of his life. This was attested by his fine library, consisting of books of all kinds of a social, economical and judicial character, which he gave to the Bar Library Association of the city of Duluth before his death. He was a man who consciously cultivated the habit of concentration to such a point that at times he was totally oblivious to what was going on around him In trying a case either to the court or to the jury, he always had a consistent theory of his case, and of the points that were vital to its success. He never "scattered" in his objections to the introductions of testimony or in introducing testimony himself. He usually ignored all matters or evidence that did not bear upon his theory of the case.

“Mr. Billson was acknowledged by all the members of the Bar of his district to be in a class by himself. He had a keenly analytical mind and a wonderful and discriminating use of the English language, always selecting intuitively the right word to express his meaning, and always ready to illuminate his point with a wealth of illustration. His disposition was extremely even and kindly, and his

manner courteous, whether in social life or the trial of a lawsuit.

“Although forced to retire by ill health from the practice of his profession, he devoted as much of his time as possible to its study, spending a great deal of time in the Law Library at Los Angeles, and producing during those years a study, entitled "Equity in Its Relations to Common Law," published in 1917.”

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