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HARVARD STUDIES IN
JURISPRUDENCE

VOLUME I

THE
ENFORCEMENT OF DECREES
IN EQUITY

BY

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To ROSCOE POUND
THIS ESSAY IS GRATEFULLY DEDICATED

PREFATORY NOTE

THIS essay is written primarily to advocate an enlargement of the equity powers of American courts which will enable them to give a real effect to their decrees; for example, to transfer titles directly instead of by ordering a litigant to make the transfer. This is no innovation. Such power exists in more or less perfect form in most of the states of the Union. Its operation is not a matter of conjecture, but can be observed over a period of more than a century of practice, and in a wide variety of social conditions. But some states, and it is believed the Federal jurisdictions also, lack this power. Moreover it nowhere exists fully for all cases and its need has become more apparent to-day because of a definite trend in our legislation aiming at a restriction of the contempt process which constitutes the original, and still here and there the only, enforcing agency of our courts of equity.

But although the primary purpose of the essay is thus to urge a specific reform of happily no very extended character, the treatment given the subject has aimed at considering it in the light of its wider juristic aspects. It is regarded, in the first place, as a phase of the tendency to enlarge the remedial powers of our courts, to make their administration of relief more accurate and more effective than is possible now, where specific relief, either reparatory or preventive, is regarded as on the whole merely auxiliary to the substitutional relief of damages. And, in the second place, it is regarded as a part of the movement which has gradually attenuated the function of a trustee or other holder of the legal title to property, until to-day the beneficial owner who holds the equitable