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Lecture I.

I propose to begin by speaking briefly of the Forms of Action, with especial relation to those which protected the possession and ownership of land. It may---I am well aware of it---be objected that procedure is not a good theme for academic discussion. Substantive law should come first--adjective law, procedural law, afterwards. The former may perhaps be studied in a university, the latter must be studied in chambers. As to obsolete procedure, a knowledge of it can be profitable to no man, least of all to a beginner. With this opinion I cannot agree. Some time ago I wished to say a little about seisin, which still, with all our modern improvements, is one of the central ideas of Real Property Law, but to say that little I found impossible if I could not assume some knowledge of the forms of action. Let us remember one of Maine's most striking phrases, "So great is the ascendancy of the Law of Actions in the infancy of Courts of Justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure." [Maine, *Early Law and Custom*, p. 389]. Assuredly this is true of our real property law, it has been secreted in the interstices of the forms of action. The system of Forms of Action or the Writ System is the most important characteristic of English medieval law, and it was not abolished until its piecemeal destruction in the nineteenth century.

What was a form of action? Already owing to modern reforms it is impossible to assume that every law student must have heard or read or discovered for himself an answer to that question, but it is still one which must be answered if he is to have more than a very superficial knowledge of our law as it stands even at the present day. The forms of action we have buried, but they still rule us from their graves. Let us then for awhile place ourselves in Blackstone's day, or, for this matters not, some seventy years later in 1830, and let us look for a moment at English civil procedure.

Let it be granted that one man has been wronged by another, the first thing that he or his advisers have to consider is what form of action he shall bring. It is not enough that in some way or another he should compel his adversary to appear in court and should then state in the words that naturally occur to him the facts on which he relies and the remedy to which he thinks himself entitled. No, English law knows a certain number of forms of action, each with its own uncouth name, a *writ of right*, an *assise of novel disseisin* or of *mort d'ancestor*, a *writ of entry sur disseisin in the per and cur*, a *writ of besamel*, of *quare impedit*, an *action of covenant*, *debt*, *detinue*, *replevin*, *trespass*, *assumpsit*, *ejectment*, *case*. This choice is not merely a choice between a number of queer technical terms, it is a choice between methods of procedure adapted to cases of different kinds. Let us notice some of the many points that are implied in it.

Forms Of Action At Common Law

H Kauffman



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