

Handbook on the Law of Persons and Domestic Relations (Book Review)

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HANDBOOK OF THE LAW OF PERSONS AND DOMESTIC RELATIONS. By Joseph W. Madden. West Publishing Co., 1931, pp. xiv, 748.

The present volume replaces in the Hornbook Series the second revision of Mr. Tiffany's book of the same title, published in 1921, and is therefore not entirely a newcomer to the series. Substantially the same matter and arrangement of topics is preserved, but the division of the former volume dealing with Master and Servant has been, regrettably, discarded—regrettably, because only in some such treatise as this can that relationship be studied as a thing in itself, rather than as an incident to some other subject. Much of the language of the previous volume is here preserved intact, but the whole text has been somewhat enlarged, in part through the addition of historical matter, in part by the presentation of entirely new sections, like that on Alimony and Suit Money. The notes, always an important feature in the Hornbook Series, have been brought down to date, more citations having been added. Convenience of reference might perhaps have been promoted through arranging the citations in the longer footnotes alphabetically by the jurisdictions from which they are drawn; this plan seems to have been followed in some of the notes, and it is too rare a virtue to be practiced by halves.

Yielding to necessary limitations of space, Professor Madden has not endeavored to discuss minutely the effects of the statutory modifications of the common law for each jurisdiction, which, particularly in the field of Marriage, Husband and Wife, and Incidents of the Marital Relation, would have been an almost impossible task. He has chosen wisely, first, to set forth the common law rules, and then to indicate the general operation of the various classes of statute, providing in each instance a copious citation of supplementary authorities. The author gives no extended criticism of the numerous decisions which have been well-springs of scholarly controversy, though his temptations must have been almost irresistible. But many references are made instead to secondary sources, principally to the leading university law reviews, where the cases are more fully treated than the scope and purposes of the present volume permitted. In the treatment of matters not usually complicated by conflict of statute,—the entire subject of infants and their contracts, for example—the book is particularly good.

Professor Madden does not always avoid the generalities which disregard the existence of a strong trend of decision to an opposite view. To say briefly, " * * * where a will is proved, and is objected to on the ground of want of mental capacity, the burden of proof is on the contestant" (at p. 639), citing only *Brooks v. Barrett*, 7 Pick. (Mass.) 94 (1828), is to lay altogether out of sight the real conflict of authority on what weight attaches to the "presumption of sanity." There is considerable support for the view that it at best but shifts to the contestant the burden of proceeding with evidence and leaves the burden of the issue of sanity with the proponent.¹

The volume as a whole, however, fully accomplishes what one may take to be its main purposes, achieving, as it does, a summary of the law on a

¹ *Delafield v. Parish*, 25 N. Y. 33 (1862); *Matter of Eno*, 196 App. Div. 131, 165 (1921); *Clifford v. Taylor*, 204 Mass. 358, 361 (1910).

complex subject, and presenting in a carefully indexed volume an admirable outline of the authorities in each jurisdiction as the foundation for more extended research.

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CARMODY ON PRACTICE (Students' Edition). Revised by Edw. Q. Carr and John F. X. Finn. New York: Clark Boardman Co., 1931, pp. 1,088.

Law is divided into substantive law and adjective law. The former defines the rights of individuals while the latter indicates the procedure by which such rights are to be enforced.¹ In other words, substantive law is that portion of the body of the law which contains the rights and duties and the regulations of government as opposed to that part which contains the rules and remedies by which the substantive law is administered.² The administration of the substantive law is commonly known as Practice. Practice is defined as the form, manner, and order of conducting and carrying on suits or prosecutions in the courts through their various stages, according to the principles of law and the rules laid down by the respective courts.³

Practice in New York, controlled largely now by the Civil Practice Act, is the culmination of various endeavors on the part of the Legislature to simplify and make uniform rules of practice. The Code of Procedure, often referred to as the "Field Code," inaugurated statutory regulation of procedure in New York. This code consisted of only 391 sections. The code assumed that the legislature was thereafter to govern court procedure and that idea, coupled with the narrow interpretation of the judges who had been opposed to its enactment, resulted in complications. Legislative meddling caused the code to become considerably enlarged.⁴ In 1880 there was enacted what was known as Throop's Code under the name of Code of Civil Procedure. This code finally became a statute containing about 3,400 sections. In 1920 the Legislature replaced the Code of Civil Procedure with the Civil Practice and a number of allied acts.⁵ The Civil Practice Act, supplemented by Rules of Civil Practice, is the basic act of practice in New York.

So complicated, apparently, is the study of Practice that the average student approaches it with no little trepidation. And perhaps rightly so, for this subject has been termed the most difficult of all law school subjects. Anything which will assist the student in grasping a knowledge of the fundamentals is indeed a blessing. Such a blessing is the Students' Edition of Carmody on Practice. The task of revising the previous editions of this important work fell into the

¹ HOLLAND, *ELEMENTS OF JURISPRUDENCE*, 148.

² *Cyc. Law Dict.*, 879.

³ *Ibid.*, 712.

⁴ TAFT, *LAW REFORM* (1926) 102.

⁵ New York City Court Act, Surrogate's Court Act, Court of Claims Act, Justice's Court Act.