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BOOK REVIEWS

Handbook of the Law of Persons and Domestic Relations, by Joseph W. Madden. St. Paul, Minn: West Publishing Co., 1931. Pp. 658. $5.00.

If one were called upon to review a particular mule, it would be neither helpful, nor just to the parents of the mule, to condemn the animal because its ears were rather longer than those of a race horse. So, too, when one is called upon to review a handbook on the law of domestic relations, it is neither helpful nor just to the author to condemn the book for not being a critical treatise on the subject. It does not pretend to be.

The exact nature of Professor Madden's book is revealed by its own title. It is a handbook. It compiles the law, and presents it clearly and simply. No searching inquiry is made into historical origins, nor into the social and economic forces which have brought

about an almost complete revolution in certain portions of the law of domestic relations, particularly the law dealing with the status of married women. The earlier law is concisely presented; the modern law is set forth with equal precision. Sometimes the course of the law is traced, but it is done in a swift, uncritical manner.

There is no extensive effort to appraise existing law analytically, although sometimes the author comments upon the validity of some rule or decision. The more common statutes are referred to frequently. Recent developments are usually presented. For example, in the section on conflict of marriage laws the author says, "A trial court in England recently held that a Russian marriage contracted under the present law of that country which puts all marriages on a 'trial' basis, and allows one spouse to divorce the other without cause, and by an easy and merely formal act, did not constitute a 'marriage' at all within the English meaning of marriage. But while there was logic in this position, yet the consequences would have been too momentous, and the decision was reversed by the Court of Appeal."

Again, in setting forth the law concerning persons *non compotes mentis* Professor Madden refers to the modern sterilization statutes and the decisions thereon. On the other hand, his treatment of the responsibility of insane persons for crime is merely a setting forth of old formulas. No one would suspect upon reading the three and one-half pages on the subject that he had crossed a battleground of modern legal thought.

The book is divided into four parts, dealing respectively with Husband and Wife; Parent and Child; Guardian and Ward; and Infants, Persons Non Compotes Mentis, and Aliens. The clean-cut division of the different parts into sections, each beginning with a summary of its contents in bold-faced type, after the fashion of newspaper headlines, is helpful in using the book for reference purposes.

This book will prove of great value to lawyers and students wishing to find quickly a brief summary of cases on any subject within this field, or desiring a rapid, bird's-eye view of the field as a whole. It reflects the law; it contributes little to legal thought. The latter remark is descriptive, not critical; for as indicated above, the book purports to be a handbook only, and it is a good handbook.

FRANK W. HANFT.

Chapel Hill, N. C.

American Family Laws, Vol. I, by Chester G. Vernier. Stanford University Press, 1931. Pp. 305. $5.00.

If all treatises on any branch of the law followed the method used by Professor Vernier, the analogy between law and some of the physical sciences would be striking. He has gathered, classified, and tabulated the statutes of the American jurisdictions relating to marriage. It is true that in his treatment of each aspect of the law he frequently begins with a statement of the common law, but the statement is usually brief, general, and unaccompanied by any extensive review of cases. He then sets forth, compares, and contrasts the statutory provisions of every American jurisdiction having any statute on the matter in hand. Frequently the material is put into tables in order to make the situation as a whole more visible, and the statutes in each state more readily comparable with those in others. In his desire to present the whole picture the author is sometimes guilty of setting forth trivial details; for example, the marriage license fees in each jurisdiction. Occasionally his weakness for tables impels him to rather odd procedure. For the purpose of showing whether common law marriages are valid or invalid in the various jurisdictions, he selects a number of text authorities, and tabulates their opinions as to each jurisdiction. Sometimes the authorities do not agree; in the same jurisdiction the word "valid" appears under the name of some texts; "invalid," or "doubtful" under others. This method of determining the law by tabulating the writers reminds us of the medieval practice of counting glosses, and strikes the modern lawyer as peculiar.

The creation and validity of the marriage relation rather than its incidents are the subject of the book. For example, the rights of the spouses in each other's property are not treated. The volume is to be followed by others on other aspects of family law.

In spite of the mechanical methods used, the book is far from dull. The vigorous comments of the author, and the visibility given the confusion and variety of statutory treatments of the same matter awaken fresh interest as each new subject is surveyed. This book is of relatively little value as an aid to the lawyer in the handling of courtroom cases, for the obvious reason that as yet statutes of other jurisdictions are given small weight as precedents. Professor Madden's book, reviewed above, is more useful as a lawyer's tool. But

for anyone wishing to gain an accurate picture of the state of marriage law in this country, the present volume is invaluable.

FRANK W. HANFT.

Chapel Hill, N. C.

Medical Jurisprudence, by Alfred W. Herzog. Indianapolis, Ind.: The Bobbs-Merrill Company. Pp. lxxxix, 1051. $15.00.

Dr. Herzog, the editor of the *Medico-Legal Journal,* who for thirty-five years has been an active member of the New York and New Jersey bars, as well as a surgeon and medical expert, has written what purports to be the first complete work of medical jurisprudence since the monumental work of Wharton and Stille in 1905. The scope of the work is indicated by the fact that there is a twenty-nine page table of contents, a table of cases listing more than 7,000 reported cases, and a well-prepared index of one hundred and ten pages. The author rarely cites authority for his position on medical topics, for he writes as a first-hand authority on these matters, but his citation to, and comment upon, reported legal cases is frequent and enlightening. Dr. Herzog touches lightly upon questions of diagnosis and treatment, but invariably treats in detail the weak points in medical attack and defense, looking always to the actual trial of the cases. This treatment of the subject makes the book especially valuable to the practicing attorney and the medical expert who wish a general "quick search manual" near at hand for instant reference.

The work is divided into five parts: (1) the medical expert and opinion evidence; (2) wounds and injuries, including such new topics as traumatic hysteria, malingering and the medico-legal aspects of insurance; (3) mental deficiency and insanity, including inebriety and drug addiction, as they effect criminal and civil responsibility; (4) sex, including virginity, pregnancy, legitimacy, venereal diseases, rape, etc.; (5) poisons, including habit-forming drugs. The discussions of compensational and occupational diseases, of life, health and accident insurance, of identification of bodies, of malpractice, of X-rays, of chemical and mechanical lie-detection, of intelligence tests, of sexual perversions, of agglutination and Wasserman tests—all indicate recent modern developments in medico-legal jurisprudence not treated fully in earlier volumes.

Such a book as this, seeking in a single volume to answer every

question of the physician or lawyer dealing with medico-legal problems, must necessarily sacrifice considerable detail in order to avoid a prohibitive size and cost. Nevertheless it is to be regretted that the exhaustive treatment given the subjects of poisons, abortion, tests of pregnancy, the forms of mental unsoundness, malingering or feigning, and gun-shot wounds could not also have been given the other topics treated. Too, the book suffers from the absence of plates, especially in connection with such subjects as X-rays, gun-shot wounds, fractures, and pregnancy.

In short, here is a compact volume, attempting to answer all the questions of medico-legal experts and practicing attorneys, involving medical jurisprudence. The book is rich in suggestions to the trial lawyer, is non-technical in its language, is well-indexed for use as a hornbook on the subject, and should be of genuine value as a new tool for the trial and appellate lawyer.

DILLARD S. GARDNER.

Marion, N. C.

Judge and Jury, by Leon Green. Kansas City, Missouri: Vernon Law Book Co., 1930. Pp. vi, 429. $6.00.

The title of Leon Green's recent book, "Judge and Jury," seems misleading, since it is almost entirely a collection of essays in the law of Torts, most of which were published as articles in legal periodicals. Students of the law of Torts are already familiar with the chapters on "The Duty Problem" which appeared in the *Columbia Law Review,* "The Negligence Issue" in the *Yale Law Journal* and "Rules of Causation" in the *University of Pennsylvania Law Review.* These articles carried forward the development of the ideas which Mr. Green had previously set forth in his "Rationale of Proximate Cause." What gives the book unity and justifies the title is the consistent emphasis on procedure and administration and on the machinery of the judicial process in handling tort cases, all of which calls for a better understanding of the functions of the judge and the jury.

It is frequently said that the jury is a law unto itself, especially in those states where the trial judge is forbidden to comment on the evidence. In the chapter on "Jury Trial and the Appellate Courts," Mr. Green subjects appellate review of tort cases to a searching inquiry and concludes that, whereas the trial judge has lost much of

his control over the jury, the appellate court has strengthened its hand and, for practical purposes, has restored the judge's supervisory power over the jury's verdict. This has been accomplished by the tremendous elaboration of the rules and doctrines to be used in deciding tort cases, so that there is always at hand some formula by which the appellate court can reverse the jury when such action is deemed advisable. Such control of the jury by our appellate courts is certainly a matter of the utmost importance in the field of judicial administration. That it has been done by building up a multiplicity of rules and doctrines in various fields of tort law may be illustrated by the law of negligence with its principles and standards, rules and theories, with their manifold variations and exceptions. Certainly, the appellate court which cannot find a way to defeat a contrary jury in negligence cases has failed to take advantage of the well-stocked armory of legal rules and doctrines.

This conception of the control of the jury by the appellate court through the elaborate ritual of rules and doctrines comes to the reviewer as new. Likewise in the chapter on "Deceit," a corollary of this is presented, which is capable of almost universal application. Mr. Green shows that rigid rules would be undesirable and dangerous in the law of deceit because rascals would find no difficulty in evading the law if it were definitely fixed. But if there is a multiplicity of rules and doctrines for the court to fall back upon, then the law is flexible, and courts are enabled to deal with the complex situations of fraud and deceptions in modern life as the cases arise. It is evident that such flexibility is needed in all fields of law. Mr. Green has demonstrated its great value in the fields of Negligence and Deceit, but his arguments would apply with equal force to any of the complex and difficult cases which courts are called upon to decide. It is in this way that appellate courts may give to the facts and circumstances of each case the importance they deserve in judicial decision.

Mr. Green's realistic essays are stimulating and provocative and should be read by lawyers and judges, all of whom are engaged in the business of administering justice through law.

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