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Book Review

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North Carolina Family Law. By Robert E. Lee. Charlottesville: The Michie Company, 1963. Pp. 1500. $45.00.

In North Carolina Family Law, Professor Robert E. Lee[1] has written a book that is interesting, instructive, and indispensable to the practicing lawyer in North Carolina—in advising his clients, in trying his cases, in prosecuting his appeals. It is in the high tradition of the late Professor McIntosh on Civil Procedure and Professor Stansbury on Evidence.

The book is written in three volumes, with fifteen hundred pages, divided into thirty chapters, and subdivided into three hundred sections. These volumes are bound in attractive cover, printed in inviting type, and made more useful by a definitive table of contents, a revealing index, and an exhaustive table of cases and citations to statutes and constitution. Each volume has a pocket for supplements which will be issued from time to time to keep it up to date.

Professor Lee spells out the substantive law involved in the relationships of people from engagement to marriage, from marriage to its dissolution in death or divorce, from the birth of children to their maturity, and, in special circumstances, thereafter. He follows headings of volumes, chapters, and sections in a style of writing that carries his own originality in thinking and expression. He goes beyond the limits of substantive law into the procedural problems involved in putting the substantive law into practice. This is par-

[1] Professor Robert E. Lee was born in Kinston, North Carolina in 1906, graduated from the Kinston public schools, Wake Forest College and its Law School. Thereafter he attented Columbia University for his M.A. degree, Duke University for his LL.M. and S.J.D. degrees, and New York University and the University of Pennsylvania for further graduate study.

He taught at Temple University from 1925 to 1945, in the United States Army University in England in 1945-46, served as Dean of Wake Forest College Law School from 1946 to 1950, and has taught full time in that Law School since 1950. He was visiting professor at the University of Florida Law School in the summer of 1948, chief counsel of the Office of Price Stabilization, Region 4, in 1951 and 1952, and has served on many state commissions in North Carolina, including the General Statutes Commission, the Commission to Study the Laws of Domestic Relations, the Commission to Improve the Administration of Justice in North Carolina, and the Voluntary Arbitration Panels of the American Arbitration Association and of the North Carolina Department of Labor.

ticularly helpful in his discussion of procedures invloved in ante-nuptial agreements, separation agreements, alimony and divorce proceedings, post-nuptial agreements, custody of children, foreign decrees and conflict of laws.

He helps the liveliness of his book by emphasizing problems where litigation is heaviest, as illustrated by the 244 pages devoted to the support of wives and children. Professor Lee points out that divorces from bed and board have become a rarity. During the last statistically reported year there were only thirteen in this state. Actions for alimony without divorce and separation agreements have replaced them. As a consequence, there may be found within the book a comprehensive treatment of actions for alimony without divorce and separation agreements. Nevertheless a practicing attorney must still have a thorough knowledge of the grounds for divorce from bed and board, which have been separately covered in Chapter 7, because they are frequently used as a statutory basis for an action for alimony without divorce or as a bargaining weapon in the negotiation of a separation agreement.[2]

He goes beyond the civil proceedings involved in protecting the rights and enforcing the responsibilities of persons who have promised to marry, of husband and wife, of parent and child, into the supporting sanctions thrown by the criminal law behind these rights and responsibilities by way of buttress—in juvenile courts, domestic relations courts and superior courts. He puts family law in the context of related fields and incidental matters in sections dealing with wills, dissent from wills, intestate succession, year's allowance from decedent's estate, acts barring property rights, safe deposit boxes, funeral expenses, and things not usually included in domestic relations texts. It goes beyond the limits of a purely local book and puts the family law of North Carolina in its American setting, comparing it with the currents of development in other jurisdictions throughout the country.

Professor Lee flavors the discussion of constitutions, statutes and decisions which are the lawyer's stock in trade with the interlineation of sections discussing the history of early marriage laws, central registration of annulments and divorces, divorce statistics, and frequent comment on the social workings of substantive laws and

[2] 1 LEE, NORTH CAROLINA FAMILY LAW § 40, at 177 (1963). [Hereinafter cited as LEE.]

procedural rules. He intends his footnotes to document his learning. But that is not all—he intends them to illuminate his text for those who read them. And if the reader starts to read them he will keep on reading for fear of missing important distinctions or historical background.[3] In text and footnotes he has come as close as any man I know to putting every paling in the fence without distorting or obscuring the line and direction of the fence.

Professor Lee is particularly intriguing in tracing the evolution of the legal rights of women in North Carolina, the devolution of the legal rights of men, and the changing rights and privileges of men and women—not without the saving grace of humor. Here is a paraphrasing of some of the distinctions which make a difference in his mind: The law requires the husband to support the wife but not the wife to support her husband.... It is a crime for the husband to abandon the wife but not for the wife to abandon the husband.... The primary responsibility for supporting minor children is on the father and not on the mother.... A husband who marries and divorces one woman after another and marries again may have to support his first, second, and third wife at the same time, not so with a wife who marries and divorces one husband after another.... If a man uses his money to buy land and has the deed made out to his wife there is a presumption that he intended a gift to his wife, but if a woman uses her money to buy land and has the deed made out to her husband there is a presumption that she intended to keep it for herself.... A husband has to pay the funeral expenses of his wife, but a wife does not have to pay the funeral expenses of her husband.... There are statutes limiting the hours of work for women but not the hours of work of men.... It is a crime for a man to say that an innocent woman has engaged in sexual intercourse but it is not a crime for a woman to say that an innocent man has engaged in sexual intercourse.... It is a crime for a man to peep into the bedroom of a disrobing woman but not for a woman to peep into the bedroom of a disrobing man!

To make bad matters worse: The life expectancy of a woman is

[3] See, *e.g.*, 1 LEE § 10 n.10 where he tells the story of the origin of the second proviso in N.C. GEN. STAT. § 51-1 (1953) which validates marriages by ministers of the Gospel who had been licensed but not ordained. In 1 LEE § 20 n.32 he gives the background of N.C. GEN. STAT. § 51-5 (1953) which legitimates children born of a voidable or bigamous marriage, and in 1 LEE § 29 n.233 Professor Lee explains the situations giving rise to the provisions of N.C. GEN. STAT. § 51-3 (1953) relating to annulments.

six years longer than the life expectancy of a man.... There are more men than women in mental institutions.... The suicide rate of men to women is ten to four.... Women have greater resistance to some diseases than men and recover more rapidly from diseases they have.... In the United States women own sixty to seventy per cent of the private wealth of the country and men only thirty to forty per cent.... Here and there in our law we find ancient relics to the effect that the husband is the head of the family, but all too often, like the King of England, he is a figurehead.

In 1872 the Supreme Court of Illinois said:

> The ancient landmarks are gone.... The foundations of the nuptial contract, and the maintenance of the marriage relation, are crumbling. The unity of husband and wife has been severed.... She no longer clings to and depends upon man, but has the legal right and aspires to battle with him in the contests of the forum; to outvie him in the healing art; to climb with him the steps of fame; and to share with him in every occupation.... His legal supremacy is gone, and the sceptre has departed from him.[4]

In 1875 Bishop wrote about the rights of married women in Massachusetts:

> This is one of those States in which legislation, almost ever since the popular agiration of the subject of married-women laws commenced, has been travelling forward seeking rest and finding none.... [They leave little] to be complained of by the most ardent advocate of the policy which yields to wives the double advantages of matrimony and single bliss, and lifts from the shoulders of their husbands none of the burdens borne when the law gave them conpensatory advantages. It remains only to add a provision compelling every young man to marry instantly the girl who chooses him, and the end of domestic woe will have come in Massachusetts. Then she can have, as she can have now if the man will submit to the marriage, for her sole and separate use, to accumulate till her husband dies, all that she owned before marriage, all that comes to her afterward, and all that she can acquire by her labor and skill; while he provides for her house room, meals, clothing, and other necessaries of life.[5]

If these changes in the law brought cold chills to the men of Illinois and Massachusetts in the 1870's they would freeze to death on reading Professor Lee's account of the march of progress in

[4] Martin v. Robson, 65 Ill. 129, 137-39 (1872).
[5] BISHOP, THE LAW OF MARRIED WOMEN § 727 (1875).

North Carolina by the 1960's, and turn over in their graves to hear him describe the shape of coming events which are already casting their shadows before. Perhaps one of the most enlightening and lasting achievements of his book will be found in his suggested changes in the law and his projections for the future.

The author says that N.C. General Statutes section 52-12[5a] should be repealed. This statute requires "separation agreements and contracts between husband and wife affecting the wife's real estate to be performed pursuant to a statutory ritual. Contracts between husband and wife affecting the husband's real estate are not burdened"[6] with this useless ceremony. He goes on to say that there is no

> valid reason for denying the husband and wife complete freedom to deal with each other respecting property rights, subject only to the rules applicable to persons occupying a confidential relationship, and the rules protecting the rights of creditors. A step in the right direction was taken in 1957 when the General Assembly deleted from N.C. Gen. Stat. § 52-12 a provision relating to the personal property of the wife. An amendment to the Constitution of North Carolina would not be necessary for the repeal of N.C. Gen. Stat. § 52-12.[7]

He points out that the requirement that the certifying officer "incorporate in his certificate a statement of his conclusions and findings of fact as to whether or not said contract is unreasonable or injurious to the wife" has become a perfunctory ceremony, and "the certifying officer simply signs the established form, collects his fee, and rarely, if ever, makes a real inquiry as to whether the contract is unreasonable or injurious to the wife."[8]

Professor Lee points out that General Statutes section 31A-1(a)(1),[8a] enacted in 1961, says that a spouse from whom a divorce from bed and board has been obtained shall lose property rights as set forth in the section, and urges that

> some method should be approved, either by legislation or court decision, whereby the spouse "from whom a divorce from bed and board has been obtained" may be assured that he or she does not lose the property rights listed in N.C. Gen. Stat. § 31A-1(b) where there occurs a reconciliation and resumption of cohabitation.[9]

[5a] N.C. GEN. STAT. § 52-12 (Supp. 1963).
[6] 2 LEE § 111, at 48-9.
[7] *Ibid.*
[8] 3 LEE § 248, at 177-78.
[8a] N.C. GEN STAT. § 31A-1(a)(1) (Supp. 1963).
[9] 2 LEE § 219 n.20.

The author hopes that North Carolina will not continue to hold that an adopted child is excluded from a testamentary provision when such terms as "children," "issue," "lawful issue," "heirs," "lawful heirs," and "descendants" are used to designate the inheritors of a named person solely for the reason that the testator did not know of the adoption.

> There is no justification for such decisions now that G.S. § 48-23 has elevated the adopted child to the same legal status of a natural child. Obviously an adopted child should not be excluded if the testator has used the phrases "my grandchildren" or the "grandchildren" of a named person. The terms "grandchildren," "brothers and sisters," "nephews and nieces," and similar expressions can be translated into terms of "children" of particular parents.
>
> Of course, it should always be possible for a testator to exclude adopted children by a manifested intention in his will. A testator should be allowed to give his property exclusively to those of his own blood if he so desires. But in the absence of a clearly manifested intention in his will, there should not be a presumption that the testator intended to limit the beneficiaries of his estate to those of his own blood. A testator in North Carolina may, under existing decisions, exclude adopted children through the use of such terms as "born to," "bodily heirs," "heirs of the body," or "lawfully begotten heirs of the body."[10]

The author goes into a detailed discussion of tort actions between parents and unemancipated minor children and suggests that the time has come to abolish the increasing criticism of the general rule that an action for personal injuries cannot be maintained between parent and child in the light of the growing number of exceptions to the rule.

> We should frankly recognize that the earlier cases were wrongly decided. The reasons therein stated are no longer convincing. The uncompensated personal injury in parent-child tort cases is no more apt to promote or preserve harmony in the family than an action for personal injury between minor brothers and sisters in the home, or an action between parent and child in respect to contract and property rights (including a tort action affecting property), or a criminal action between parent and child.[11]

Professor Lee's book will save the lawyer time and money, improve the quality of advice and counsel to his clients, and guide him

[10] 3 LEE § 257, at 216-24.
[11] *Id.* § 248, at 170.

in recommending changes in the law. Its value to the Supreme Court of North Carolina is already attested by quotations and citations in such cases as *Grabenhofer v. Garrett*,[12] and *Williams v. Williams*.[13] It is a tribute to Professor Lee's industry and scholarship. It brings credit to him as an author. It adds a cubit to the distinction of Wake Forest Law School where he has been teaching for twenty-two years. It is another illustration of the worth of Wake Forest College in the life of North Carolina—a worth that is not only solid but inspiring, and which the writer delights to honor.

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[12] 260 N.C. 118, 131 S.E.2d 227 (1964) (referring to Lee, *Tenancy by the Entirety in North Carolina*, 41 N.C.L. REV. 67 (1962) which is now Chapter 12 of Professor Lee's book).

[13] 261 N.C. 48, 134 S.E.2d 227 (1964).