



Notre Dame Law Review

Volume 23 | Issue 1

Article 8

11-1-1947

Book Review

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Recommended Citation

Leo O. McCabe, *Book Review*, 23 Notre Dame L. Rev. 123 (1947).

Available at: <http://scholarship.law.nd.edu/ndlr/vol23/iss1/8>

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ought to have the power to exert safeguards against such interference with the course of trial, as was found in this case.

With Mr. Chief Justice Vinson, Mr. Justice Jackson, and Mr. Justice Frankfurter dissenting, the judgment of the Texas Court was reversed and the petitioners were discharged from custody for constructive criminal contempt.

James D. Sullivan

BOOK REVIEWS

KEEZER ON THE LAW OF MARRIAGE AND DIVORCE, THIRD EDITION, by John W. Morland.¹ Indianapolis: Bobbs-Merrill Company, 1946. 1367 pages. \$15.00—Dean Morland's book, while not so separated, may be divided into four parts. The first part, consisting of the first forty-two chapters of 774 pages, treats of the substantive law of marriage, annulment, breach of promise, alienation of affections, separation agreements, separate maintenance, divorce, alimony, counsel fees and custody of children.

The second part, consisting of ten chapters of 104 pages, treats with problems of a procedural nature such as presumptions, burden of proof, parties, venue, process, service, pleadings, evidence, decrees, trial and appeal.

The third part, consisting of four chapters of 170 pages, is comprised of numerous forms with respect to complaints, petitions, process and decrees relating to divorce, contempt, annulment, separate maintenance and like subject matter.

The fourth part, consisting of three chapters of 190 pages, contains a summary of the statutes abolishing actions for breach of promise, alienation of affections, seduction and criminal conversation, and a synopsis of the statutes of the various states and territories with respect to marriage and divorce.

In view of the lengthy index consisting of 119 pages, the book could also be said to have a fifth part. In referring to this point, Dean Morland is to be commended for the work he has done in compiling a detailed index and in thus making his book readily usable by both lawyer and student.

In a book dealing with such a vast amount of law covering the various jurisdictions in the field of domestic relations, it is necessary to confine much of the text to bare statements of principles or of decisions. In a number of situations, however, Dean Morland has discussed the pros and cons with respect to certain conflicting decisions and points of view of the various courts. The reviewer regrets that more space was not given to the personal views and arguments of the author, although, as might be expected, the views of the author and of the reviewer do not always coincide. For example, the author devotes considerable space to arguments favoring abolition of common law marriages which still are recognized in some eighteen jurisdictions. Probably few would disagree with his stand on this matter. The impression is made, however, that such abolition should come about not by legislation alone, but by judicial interpretation of the existing statutes. At the time most of the marriage statutes in question were passed or modified, the legislatures were well aware of the interpretation given to such statutes by the courts, that is, that the formal requirements were directory and not mandatory. In the opinion of the reviewer, abolition of common law marriage by statutory construction would, in most cases, at the present time be judicial legislation and judicial legislation has already gone too far. Too many statutes mean nothing because the courts either ignore them, misinterpret them, or hold them unconstitutional, primarily because such statutes do not meet the particular court's views of what the law should be.

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Dean Morland repeats the often repeated and accepted proposition that the existence of a statutory ground is a condition precedent to a divorce and that a marriage may be terminable only by law and not by the consent of the parties. In his preface, he says, "It is submitted that courts are and have ever been opposed to divorce except where the marriage in question has failed and the plaintiff has affirmatively established his or her right to a divorce on the grounds laid down by the statute." Subsequently, in treating of marriage, he adds, "Marriage is a social institution regulated by public authority. . . . It cannot be rescinded by either party or both at their desire, for its conditions are fixed by law." Later in treating with divorce, he further states, "The grounds for divorce are purely statutory. . . . It follows that the contract of marriage can be dissolved for a statutory reason and cannot be dissolved as an ordinary contract at the desire of the parties."

In spite of these high-sounding words, the recent ratio of divorce to marriage throughout the country has been one to three.

Unquestionably, most of the complainants have established affirmatively by words, under oath, that a ground for divorce exists under the statutes of the particular jurisdiction; but it is probably true that in the majority of the uncontested cases a true legal basis for a divorce does not exist, and, as Dean Morland says, "generally more than 85% of the divorce cases are without contest." It is a generally accepted fact that a majority of such suits are collusive, the facts exaggerated or concealed, based on perjury or subject to legal defenses. In other words, if such suits were honestly contested, a high percentage could not be sustained. The net result is a divorce in which the consent of the parties is the actual prerequisite; and divorces are, in fact, granted where the plaintiff has not "affirmatively established his or her right to a divorce on the ground laid down by the statute," and, in fact, marriage can be "rescinded" by the parties "at their desire," and marriages, in fact, can be dissolved without a statutory reason and "as an ordinary contract at the desire of the parties" by going through what is treated as a formality.

There was a time in the United States when it could quite generally be said that divorce was granted only to an innocent spouse as against a guilty spouse. As indicated by the author, there is a trend away from this view. With respect to this trend, a writer quoted by the author states, "There is hope that mankind will gradually move away from the fault principle with its orientation to the past and adopt a forward looking attitude of cooperation for the future shaping of sound human relations."

It is not uncommon for certain people today to condemn, not the guilty spouse, but the innocent spouse, for not giving the guilty one his freedom to remarry. The innocent spouse is apparently cruel in not giving the guilty spouse an opportunity to wreck someone else's life. They indicate that any holding to the contrary would be against public policy and good morals. In fact, a trial judge in a recent Illinois decision *Holmstedt v. Holmstedt*, 383 Ill. 290, 49 N. E. (2d) 25 (1943) stated, "The court does not believe it is wise for people living apart to be still married to each other. It does not make for good morality. She does not want him, and still does not want to give him his freedom."

In contrast, one might note the teachings of other authorities. The following quotation from Mark, Chapter X, v. 11-12, might be apropos: "And he saith to them: Whosoever shall put away his wife and marry another, committeth adultery against her. And if the wife shall put away her husband, and be married to another, she committeth adultery."

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