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Book Reviews

John J. Locher

Richard A. Moliqie

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BOOK REVIEWS

CANONICAL EVIDENCE IN MARRIAGE CASES. By Reverend Francis Wanemacher, J. C. D. Philadelphia: The Dolphin Press. 1935.

The Reverend Francis Wanemacher, a priest of the Diocese of Buffalo, has written a book for the settlement of the countless questions that are encountered in the unravelling of matrimonial tangles, questions that tax the time and wit of parish clergy and frequently require the professional help of lawyers. Undoubtedly, the text was primarily prepared for the assistance of rectors, but it is an interesting and instructive volume for those lawyers and students who have a mental appetite for things that are commonplace but generally unnoticed. Those concerned with the gathering, the presentation, and the validity of canonical evidence in marriage cases will find this book a valuable source of information.

The author has separated the book into three major divisions. The first is concerned with the introduction of the suit by petition, the summons, joinder of issue and other matters of *processual* law. Part II treats of proof, witnesses and testimony, confessions, expert testimony, presumptions and oaths of the various parties involved. Part III takes up the matter of publication of the proceedings and the conclusion of the trial. The sections dealing with proof are deserving of special attention, as interesting comparisons between the rules of evidence in Church courts and the regular courts can be made. The effect of confessions obtained by fraud or duress is explained. The prejudicial acknowledgements must be seriously and freely made without threat or intimidation, without collusion, as in the civil courts. Age requirements for canonical witnesses are set out, while the status of privileged and incompetent witnesses is defined fully. The practice of imposing spiritual punishments on those witnesses who fail to appear in the canonical court when cited is taken up in several sections. The oaths of the parties and witnesses to the marriage suit are explained, the type of oath employed and its effect being comparable to that used in civil courts.

The author seems to be very well acquainted with the literature in the field, and the innumerable citations to the Codex Iuris Canonici and the legislation that supplements the Code make the work authentic and authoritative. The writer draws partly from practical experience that resulted from his duties as Pro-Synodal Judge of the Diocese of Buffalo. The influence of this experience is apparent throughout the book.

The book is a scientific work, organized and written as such. It does not pretend to be a textbook on the substantive law governing marriage; rather it is presupposed "that those who take it to hand are already somewhat versed in the fundamental norms and theory of the marriage law." Such a book, modest in its stated object but comprehensive in the topics discussed, cannot but merit the attention it deserves.

John J. Locher, Jr.

CASES ON THE LAW OF TORTS. Second Edition. By William M. Hepburn and Archibald H. Throckmorton. St. Paul: West Publishing Company. 1935.

Here is a later edition of the casebook on Torts by the late Charles M. Hepburn, "twenty years after," embodying the good points of the earlier work and showing the latest developments in this phase of the law. The editors have here

published a new book in every sense of the word, and not merely a supplement to the old, as is sometimes the case with second editions. They have presented the most recent trends in the field of Torts by way of new cases, by footnotes presenting the salient points of decisions but lately decided, and by quotations of pertinent sections from the Restatement of the Law of Torts. Besides this, they have reduced the size of the book. This was accomplished by omitting cases which the editors regarded as falling more properly in other divisions of the law, notably in Pleading, Procedure and Equity. Too, repetitious opinions have been discarded, and in some instances cases having value merely as additional representations of points already emphasized have been left out. But in no sense has quality been sacrificed for compactness.

Upon examining the volume, it will be found that the two chapters, "Jurisdictional Features of a Cause in Trespass" and "Characteristics of a Cause in Trespass," appearing in the first edition, have been deleted from the second; but it will also be found that some of the cases which were contained therein appear in footnotes in this edition. Others appear in different sections; *Cox v. Burbidge*, for instance, is reported under the section entitled "Liability for Animals." Herein lies another characteristic of the new book—rearrangement of material. Other sections absent from this edition include the one on "Showing the Justification of a Prima Facie Trespass" and that of "The Nature of a Cause of Action in Detinue and Replevin"; their omission is undoubtedly due to the fact that the substance contained therein does not strictly belong to Torts. Consistently with their purpose, the editors have made the chapters on "Nuisance," "Trover and Conversion" and "Defamation" less voluminous, probably for the same reason given above. But they added material to the chapter headed "Injuries to Family Rights," this chapter having been entitled "Seduction and Loss of Service" in the first edition, and they have inserted an entirely new chapter, "The Right of Privacy." There is not much change to be noted in the bulk of the chapter on "Causal Relation," but a great number of more recent and important cases, such as *In re Polemis and Furness, Withy & Co., Ltd.*, and *Palsgraf v. Long Island Railroad Company*, are reported. Nor is there much change in the chapter on "Negligence" insofar as amount of material is concerned. But in it are to be found such outstanding cases as *H. R. Moch Co., Inc. v. Rensselaer Water Company* and *United Zinc and Chemical Co. v. Britt*, besides those famous old cases whose importance cannot be gainsaid. A new section, "Liability for Negligent Language," is to be found herein.

Here, then, is a work on Torts which portrays the law on the subject in its present form with due regard to established principles. More than this, this presentation is made in a way which the editors deemed most beneficial for purposes of study and assimilation. They have arranged the matter so that the student may become acquainted with the subject by easy stages, each division as far as possible being made to dovetail with the next, so to speak. Because of the ancientness of this phase of the law, there are, of necessity, reports of very old cases to be found in every casebook on Torts, but reports of modern cases here show the view of modern courts as to the points at hand. In a good many instances, cases of the latter type are found in the footnotes. Another important addition consists in references to law reviews as further exemplifying propositions illustrated in the cases reported and cited.

The most casual perusal of the work will bear witness to the editors' endeavor to give to law schools a work best adapted to the student's needs. Judging from the arrangement of the material, the cases reported, and the nature of the footnotes, the editors have realized their purpose to provide a casebook on Torts of great value.

Richard A. Molique.

THE CANON LAW OF WILLS. By Jerome Daniel Hannan. Philadelphia: The Dolphin Press. 1935.

The material contained in this book, in pamphlet form, was reviewed in a previous issue of the *Notre Dame Lawyer* (Vol. X., p. 216), but it is believed that a few words on the present edition will not be amiss.

This is a very valuable and highly commendable treatise on Wills and the topics pertaining to them from the standpoint of the Canon Law, the Roman and the law of today. It is a scholarly treatment of a difficult subject, painstakingly prepared. It is far from elementary in the manner of presentation and presupposes some knowledge of the points covered on the part of the reader. Its value lies chiefly in its historical treatment of the subject, no serious attempt having been made throughout to state present day principles. For this reason it would hardly appeal to the essentially practical student of the law who is interested primarily in what the law is now and pays scant attention to the study of jurisprudence. But the one who enjoys investigating the nature, origin and development of the law will find a study of this work pleasant and profitable.

Many interesting points to which little attention is usually given are covered by the author. Foremost among these appears in the chapter entitled "Bequests for Masses." Every lawyer, whether Catholic or Protestant, should be acquainted with the law in his own jurisdiction on this particular phase of Wills in order that he may properly draw up for a Catholic client a will containing a clause calling for such bequests. Here a lawyer may acquire some knowledge of how this situation should be handled.

Besides its appeal to the lawyer, this book should be very interesting to those outside the profession, whether priest or layman, who desire a more complete knowledge of the subject herein treated. Beginning with the nature and origin of wills under the Roman law, the author traces the development of testamentary disposition in Europe down to the Statute of Wills in England. He then passes into a discussion of the rights of succession arising from the will. Following this is a chapter concerning the rights of heirs against legatees wherein the author shows how under the Roman law the testator was required to give a certain portion of his estate to the heir even when he disinherited him; the author suggests that such rule was probably the forerunner of the present day statutes limiting charitable bequests which have been enacted in many states. The same manner of presentation is followed throughout the book, special emphasis being placed on the precepts of the Canon Law and the Roman Law in their relation to the points covered.

Richard A. Molique.