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Handbook of the Law of Persons and Domestic Relations. by Joseph W. Madden

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BOOK REVIEWS

Handbook of the Law of Persons and Domestic Relations. By Joseph W. Madden. Hornbook Series, St. Paul, Minnesota. West Publishing Co. 1931. Pp. xiv, 748. Price \$5.00.

This new addition to the Hornbook Series takes the place of Cooley's revision of Tiffany's text on the same subject. The scope of the book is what is usually found in works of this character, including the topics of husband and wife, parent and child, guardian and ward, and persons under the disabilities of infancy, insanity and alienage. The first subdivision covers not only the relations between the spouses but also the law of marriage and divorce, though there is no consideration of breach of promise suits. There is, of course, considerable new matters necessitated by recent developments, especially in the discussion of marriage and divorce, and of infancy.

It is, of course, the well-recognized duty, as it is usually the real though unexpressed pleasure of all reviewers of law books to find as many things wrong with the work under review as possible, and to set forth such alleged deficiencies with detail and emphasis. But Professor Madden has, with extreme unkindness to the reviewers of his book, eliminated practically all errors and has in addition so well buttressed his opinion on disputable points that it is very difficult even to take issue with him. There are necessarily many points where any position taken is subject to possible disagreement, but in all of them the author has effectively supported his own conclusion.

The present reviewer is therefore driven back upon comparatively minor and inconsequential criticisms. One, which might not be unimportant if the book itself did not recognize the inaccuracy of expression involved, is the characterization of the wife's power to bind the husband to pay for her support as an "agency by necessity." This phrase is constantly used by the courts, but the result is often most unfortunate, especially when this situation is confused with a case of real agency of the wife for the husband. As the book itself points out, the "agency" in the support situation does not in fact exist. Both clearness of thinking and correctness of result would be promoted if this obligation of the husband were referred to in accordance with its actual nature—that is an obligation imposed on the husband by law and against his consent.

The reviewer is also of the opinion that Professor Madden has formulated a definition of collusion which is rather too narrow. He suggests that it involves "an imposition on the court," though it is later conceded that collusion may exist even though there is a good ground for divorce. Is it not the better view that any agreement between parties to the suit, though made and carried out in the utmost good faith and without any idea of

imposing on the court, is nevertheless collusion if it is intended to facilitate the obtaining of a divorce?

One other possible improvement in the book might be suggested. That is that there be a fuller discussion of modern statutes in regard to seduction, which have not only usually removed the ancient but dishonorable service basis for this cause of action, but have in some cases permitted a woman to sue for her own seduction.

Some other criticisms or at least expressions of disagreement might be voiced, but all such are of trifling consequences even if fully justified. It remains to speak of the virtues of the book. And it must be said at once that they are too numerous to mention specifically and too important to be regarded as in any way comparable with the trifling specific criticisms which have been suggested. This is a Hornbook which, without losing any of the advantages of brevity and convenience which are almost invariable in this series of law texts, is a thorough and scholarly piece of work on an involved and difficult subject. One expects to find a good summary of the present state of the authorities in a Hornbook, but one does not expect to find much help on difficult and controverted points. But the book under review accomplishes both of these to a degree which would have seemed well-nigh impossible in its rather small bulk.

The usability of the book is insured not only by the table of contents and an excellent index, but also by a detailed table of cases. Thus from whatever starting point one seeks to use the book, he can generally find what he desires promptly and easily; and what he finds would adequately reward a much more difficult search than is in fact necessary. Author and publisher are alike to be congratulated upon this highly meritorious work, which should be equally useful to the practitioner and to the student of the branch of the law which it thoroughly covers and very greatly illuminates.

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