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BOOK REVIEWS

THE FAMILY IN COURT. Jonah J. Goldstein. New York: Clark Boardman Company, Ltd., 1934. Pp. xiii, 284.

"The Family in Court," written by a City Magistrate who has himself served in the New York Domestic Relations Court, presents a comprehensive picture of the present work of that court, but is designed to convey many suggestions of the author for increasing the effective power of that instrument of social justice.

Arguing that progress will never be made in finding new cures for old ailments except through experimentation and the intelligent application of new treatments, the author devotes about half of his book to criticising the present New York Domestic Relations Court for its unwillingness to adopt and use the methods provided by the legislature in the revised Act of 1933 (N. Y. Laws 1933, Chap. 482, set out in full in the book).

He not only charges the judges with "under-cover" efforts to prevent taking the Family Court out of the Magistrates Court system and joining it with the Children's Court to make the present Domestic Relations Court, but also with refusing, apparently for political reasons, to establish a psychiatric bureau as provided by the new law. He states, "The Budget request for the Domestic Relations Court for the year 1934 makes no mention of a psychiatrist or a Psychiatric Bureau. . . . If the reason for the omission . . . is the state of the City's finances at the present time, it is interesting to note that such conditions did not prevent requests for an increase in the number of judges, whose salaries are \$17,500 (three times what a competent psychiatrist could be engaged for)."

Moreover, he complains of the short-sighted action of the court in dismantling the play space and rest room furnished by private charity and in telling the nurse she was no longer wanted, although, he adds, the law properly forbids children to remain in court while the domestic difficulties of their parents are being tried.

The remainder of the book is devoted to suggestions for further improvement in the laws affecting the family. Taking as his thesis that the law student without social concept becomes the attorney and the judge without social concept, he urges that the law student should be trained to deal with social problems connected with the administration of the law while yet in law school, for he suggests that experience in real estate law, wills, bills and notes, and other kindred subjects, have little to do with child behavior and that the courts devoted to the family need

fewer lawyers and lawyer-like judges and more experienced workers in social service.

Pointing out that the Domestic Relations Court has already suffered because it was designated as a "court," the author recommends that some more descriptive title should be used to remind all those attached to the court that it was essentially a social clinic. He also suggests that conference rooms would be much more help than courtrooms since, in his opinion, the court should serve as a place where matters should be "talked over" instead of "tried," as a purely legalistic disposition of each case is contrary to principles of social justice.

Among other proposed changes are a requirement that physical and mental examinations before sentence be made mandatory and not discretionary as at present, a very reasonable change in view of the case material cited to show that more social good would be accomplished thereby; another, that the age limit of the Children's Court be extended from 16 upwards to majority in order to permit the court to keep supervision of the adolescent cases in an effort to prevent the other courts from continuing to be conducted on a revolving door basis, under which, he shows, human beings are turned in, to be turned out, to be turned in, to be turned out—without beginning and without end.

He also adds the novel suggestion that deserting one's wife and family and taking one's self to another state, while not a Federal offense at present, should be made one; perhaps on the theory, though he does not so suggest, that the deserter is an article in interstate commerce. When he comes to consider the effect of the "Enoch Arden" law in New York, however, his suggestion departs from all accepted legal standards. Those who could not afford to pay for publication of summons, the author recommends, might have the notice published in the City Record without cost, or better yet, that the law requiring publication could be repealed. This last suggestion seems to invite criticism in view of the expression of the United States Supreme Court in the case of *Pennoyer v. Neff*.

The author possesses a very forceful style in driving home his arguments, frequently using epigram or slang to emphasize the ideas he discusses, but he warns the readers in advance that he is neither stylist nor master of English. Allowing due recognition for this apology in the foreword, however, it still does not serve to excuse the number of purely typographical errors which have crept into the book.

RESTATEMENT OF THE LAW OF CONFLICT OF LAWS. Adopted and promulgated by the American Law Institute at Washington, D. C., May 11, 1934. St. Paul, Minnesota: American Law Institute Publishers, 1934. Pp. xli, 814.

The process of crystallizing substantive law has received an important addition in the work before us. The subject is one of the latest subdivisions of substantive law to be developed, and, as is well known, the earliest decision in which any of the principles were held applicable is found in the reign of James II, the period of the English revolution. The reports contain very few cases before the advent of Lord Mansfield, and it must not be forgotten that the first important textbook on the subject is Story's "Conflict of Laws," published early in the last century. For that reason, the cases to be digested and correlated are all of comparatively recent date. The subject is difficult, because it involves a cross-section of every branch and subject of adjective law; so an accurate compilation of its rules is probably one of the most difficult tasks to be solved.

The reporter in charge of the subject is Professor Beale, of Harvard University Law School, and his assistants are men who, with the exception of Professor Goodrich of the University of Pennsylvania, have not been prominent in the development of this subject. It was unfortunate that Mr. Lorenzen, who was asked to assist, felt compelled, on account of a difference of opinion with the principal reporter, to withdraw at the end of the first year. This fact may serve to explain what is quite apparent on the face of the restatement—that the orientation of the subject has been made with especial reference to the latitude and longitude of the "Harvard Yard."

In the main, the principles laid down will be accepted as entirely sound and supported by a considerable weight of authority. Teachers of law can use the book with considerable confidence, keeping in mind the suggestion above indicated that there are two conflicting views with respect to important subdivisions of the subject, and that in such cases, reference must be had to the periodical literature in which the views of the various writers are set forth at length.

With regard to the analysis of the subject, the principal criticism is the inclusion of the subject of domicile as a separate chapter of the work. This subject, wherever a question involving it arises, should be considered in connection with the particular question of substantive law applicable; for example, personal relations, probate law or administration. Considered by itself, it is a question of fact, or at the best, a mixed question of law and fact, and it should not be entitled to separate treatment.

The consideration of the subject of jurisdiction of courts is

ably dealt with, as is also the subject of corporations and property. Perhaps the most difficult, and at the same time the most important branch of the subject is the chapter on the Administration of Estates. We are informed in the introduction that this section required sixteen individual preliminary drafts. It will undoubtedly be subject to further change in course of time, but it is good for working purposes as it now exists.

In paragraph 369, in referring to the law with regard to negotiable instruments, the restatement lays down this proposition: "The law of the place of payment of a negotiable bill of exchange or promissory note determines the necessity and sufficiency of presentment for payment, of demand, of protest and notice of dishonor." No authorities are known which support this position, and it is squarely contrary to the decision in *Amsinck v. Rogers*, 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. Rep. 858, 12 Ann. Cas. 450 (1907), and other important and significant decisions. There is a failure to distinguish between the necessity of protest and notice of dishonor and the form or mode thereof.

This restatement will be helpful to instructors and students but should be used with considerable care and constant reference to periodical literature and decisions.

MODEL LAWS FOR PLANNING CITIES, COUNTIES, AND STATES (Harvard City Planning Studies VII). Edward M. Bassett, Frank B. Williams, Alfred Bettman, and Robert Whitten. Cambridge, Massachusetts: Harvard University Press, 1935. Pp. viii, 137.

The present symposium represents a distinct advance in the general movement for the planning and beautification of cities and larger governmental units. The booklet is quite refreshing and almost unique in the flood of printed matter launched to accomplish ultimately the same purpose. The bulk of such material has, in general, amounted to little more than propaganda. In the present brief work there is no ecstatic vision of lovely boulevards overhung with elms and flower-bedecked parks thronged with laughing children. The work is not a mere fond wish extolling desirable ends, but a practical treatise by practical men (Three of the four collaborators are members of the bar.) offering concrete recommendations of means to be employed in attaining such ends.

Approximately half of the scant 137 pages are devoted to enabling acts in actual legislative form. The collaborators are not in entire agreement and offer separate forms. In general the plan consists of a "master plan," an "official map," presumably subsidiary thereto, a planning commission, and a board of appeals. The bulk of the treatise, exclusive of the legislative

forms, is given to the practical solution of legal problems presented by such a plan. Here again the authors are not in entire agreement.

The practical genius of the work may be best illustrated by an example of a typical problem and its solution. How may a city prevent the placing of buildings upon land "mapped" as a future street? Obviously, if the city permits buildings to be placed in the future streets, the expense of later acquisition of the land by eminent domain proceedings may be prohibitory. The city cannot afford to buy immediately all the land it may need for future streets, nor would this be desirable, since it may be found advisable to alter the "official map." Messrs. Bassett and Williams propose, as being preferable to immediate acquisition of the land by eminent domain, the prevention of the owner from building upon the land by exercise of the police power, until such time as the municipality may wish to condemn. In order to accomplish this, the "Model" law prohibits the building inspector from issuing a permit for a building in the bed of a "mapped" street. However, if the land in question is not yielding a fair return (Such land will ordinarily be agricultural land.) "the board of appeals may in a specific case grant a permit for a building there located which will, as little as practicable, increase the cost of subsequently opening the street or tend to cause a change in the official map."

Although it seems improbable that any state will pass any of the enabling acts offered *in toto* or accept any of the recommendations literally and in detail, the "Model" legislative acts and recommendations comprise a body of material which no one drafting such legislation may prudently ignore. Great credit is due the authors and their sponsors for presenting a sane, tangible, comprehensive system, succinctly stated and in intelligible form.