

## BOOK REVIEWS

*Criminal Remedies in Massachusetts for Failure to Furnish Support.* Report of Committee on Law and Procedure of the Association of Justices of District, Police, and Municipal Courts of Massachusetts. 1916. pp. 52.

The above entitled monograph is designed to interpret the provisions, and to explain the purposes and practical working, of three recent closely affiliated statutes—the Uniform Desertion Act (1911, 1912, 1914), the Illegitimate Children Act (1913) and the Destitute Parents Act (1915). Adopted for the purpose of providing more flexible and effective criminal remedies for the non-performance of the economic obligations incident to the marital and parental relations, these acts are chiefly noteworthy for the effort to procure a specific performance of these obligations under judicial supervision, in lieu of their indirect vindication by punishment, or the threat of punishment.

To this end extensive application is given to the system of probation, previously incorporated into the criminal law of the state. This is in effect a provisional suspension of the criminal penalties, conditioned upon the observance of orders issued by the court for periodical payments to the probation officer for the benefit of the party lawfully entitled to the support. Such orders may either precede or follow conviction, may precede sentence or be accompanied by the suspended sentence, and are subject to unlimited modification and renewal by the court. This necessarily involves a sweeping extension, to a subject-matter of exceeding delicacy, of the discretionary and inquisitorial functions, the enormous expansion of which has so characterized modern procedural tendencies. The report assumes without discussion the advisability of this extension. This assumption, however, is qualified by two practical suggestions which cannot be over-emphasized. The first is that the accompanying sentence be strictly adjusted to a punishment of the offense, and not aggravated for the purpose of intimidating compliance with the probationary orders. The second is that the sentence be unswervingly executed in case of delinquency in the observance of the orders. Without the former the system might develop into a tyrannical species of equitable specific enforcement under the guise of a

criminal proceeding. Without the latter, it might easily descend to a mere evasion of the criminal law.

Owing to the recency of the legislation, the difficulties of interpretation which are raised in the report are necessarily more numerous than those which are settled. Several minor procedural inadequacies of the statutes are exposed, and many valuable suggestions for their beneficent administration are given. Though invaluable for the administrator, for whom it is primarily intended, the work should also command the interest of the practitioner, the law student, and the legislator.

C. R. WARD.

*Handbook of the Law of Wills.* By George E. Gardner, Professor of Law in the Boston University School of Law. Second Edition, by Walter T. Dunmore, Professor of Law in Western Reserve Law School. Published by the West Publishing Co., St. Paul, Minn. 1916. pp. xiii, 641.

Unquestionably there is a field for "elementary treatises" which shall be "serviceable as practitioners' handbooks" when the practitioner seeks "to be reminded of the law," in which case "he wants it presented in such a way that he can pick out what he needs with the least trouble."

Such treatises to be successful need not discuss a subject exhaustively in all of its scientific aspects. To do so might, indeed, seriously detract from its usefulness, judged by the standard suggested, for it would require either great condensation or great length. Hence, it is no severe criticism to say that Gardner on *Wills* does not attempt to discuss or attempt to settle many of the points on which the learning of the experts is being expended.

In its own field it is most useful. A lawyer who wishes to find the law on any subject connected with wills will find here a summary of the recognized doctrines and, if he desires something more exhaustive, the starting point of his search. He will not in every case be justified in ending here. Thus, to cite two instances, it is stated on page 37 that the doctrine of incorporation has been questioned in Connecticut. It has been repudiated in *Hathaway v. Smith* (1907) 70 Conn. 506. On page 115 it is said: "The position is sometimes taken that the presumption of sanity establishes *prima facie* testator's capacity, and is to be given

weight as having actual probative force, along with the evidence offered by proponent, and that the other evidence offered by each party being equal, such presumption is sufficient to turn the scale in favor of the proponent." Two cases are cited, *Sturdevant's Appeal* (1899) 71 Conn. 392, *Dunmore, Cas. Wills* p. 65, and *Noble v. Armstrong* (1899) 160 N. Y. 584. *Sturdevant's Appeal* was overruled in *Vincent v. Mutual Reserve Life Fund Association* (1904) 77 Conn. 281.

The book is full of useful aids; as for instance, the collation of the various kinds of evidence which have been held admissible or inadmissible to prove or disprove testamentary capacity and undue influence, which should prove suggestive and useful to one about to try either of these questions. In general there can be no doubt that a practising lawyer, fortunate enough to own Gardner on *Wills* will thumb it often, when called upon to consider any question on the subject.

HARRISON HEWITT.

*Bankruptcy Forms, Annotated.* By Marshall S. Hagar of the New York Bar and Thomas Alexander, late Clerk of the United States District Court for the Southern District of New York. Second Edition, by Mr. Hagar. Published by Matthew Bender & Co., Inc., Albany, N. Y. 1916. pp. liv, 909.

In name this work is essentially a form book covering the field of bankruptcy practice, and yet upon examination one finds it much more than that. It is in fact a concise and working compendium of the Law in Bankruptcy as the Act of 1898 and its Amendments have been construed and elucidated by the courts in the past eighteen years. From the mass of inharmonious decisions, which only tend to confuse and befog the practitioner, the authors have skilfully and intelligently selected and cited in appropriate foot-notes only those decisions of our courts which stand to-day as authorities.

The book contains in all 390 forms, including those officially prescribed by the Supreme Court and supplemental forms useful as precedents to those who practice in bankruptcy. These apparently cover the entire subject and numerous collateral matters which touch upon, or may become incidental to, a bankruptcy proceeding; as for instance, a suit in equity whose various forms for the bill of complaint, decree, etc., are given; also the writs of *habeas corpus* and *ne exeat*, and indictments.

A careful examination of the forms given shows that, for the most part, they follow closely the accepted practice in the New York District, and, as the authors say in their preface, many of them have stood the test of judicial scrutiny. I know from experience that the practice in bankruptcy is far from uniform throughout the country and that it is difficult to collate and prepare forms which would be serviceable in all parts of the Union; but the authors have endeavored to meet this condition by the insertion of many forms purely local to certain sections of the country.

The topical arrangement of the volume is logical and complete, and very helpful to student and practitioner alike. Appended to the forms, as notes, appear citations of upwards of 3000 cases; and, as stated above, these citations are remarkably thorough, accurate, and complete; and to my mind this is the most valuable and distinguishing feature of the work, useful not only to practitioners and students, but as well to the judges, referees, and other officers of the bankruptcy courts.

The supplementary part of the book contains the Bankruptcy Act of 1898 as amended in 1903, 1906, and 1910, the General Orders promulgated by the Supreme Court, and the local rules in the important Districts throughout the United States; and also a compact and useful timetable of procedure.

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