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Book Review: The Legal Effect of Antenuptial Promises in Mixed Marriages, by Robert J. White

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BOOK REVIEWS

The Legal Effect of Antenuptial Promises in Mixed Marriages.
By Robert J. White. Published by The Dolphin Press, Philadelphia, Pa.
(1932).

This little volume of eighty pages is in large part a reprint of a series of articles which appeared in the *Ecclesiastical Review*. It is a direct result of the Decree of the Papal Holy Office of January 14, 1932 in regard to mixed marriages. This decree has raised serious questions of construction for the canonists and the author attempts to supply them with the legal background necessary to construe the decree so far as it affects the United States. For this task the author is undoubtedly fully qualified since he is not only an ordained priest but also a lawyer who has practiced in Massachusetts for eight years after graduating from the Harvard law school.

The principal contention of the author is that the promise exacted from the parties to a contemplated mixed marriage as a condition precedent to procuring the necessary dispensation for a catholic solemnization affects the right to "personality" of the catholic party and hence creates a legally enforceable contract. The author concedes that most if not all the English and American cases which pass directly or indirectly on the very question are contrary to his contention. He therefor analyses these cases, attempts to show certain defects in the processes of reasoning on which they are based, and then attempts to justify his conclusions by analogies drawn from cases arising in connection with other matters.

The writer of this review has made an intensive study of Father White's contentions and has set forth the result of his study on pages 47 and 48 of "American Church Law" just off the press. He can do no better than copy into this review the statement there made. It is as follows:

"There are a number of answers to this contention. Its extension of the jurisdiction of equity to "personality," while it has some support in decided cases, clearly goes to the uttermost verge of the law. Generally equity acts only where property rights are involved. Assuming, however, that such a right exists and is enforceable in equity, such right is clearly not confined to the Catholic party, but is enjoyed equally by the non-Catholic, and cannot in its very nature be bargained away. The religious scruples of the Catholic party on which so much stress is laid by the contention would prevent all mixed marriages with Catholics if such scruples had any real existence at the time. The promise therefore is exacted not only from the non-Catholic party but from both, and is in effect if not in terms a joint promise to the bishop or archbishop who issues the dispensation rather than a promise between the parties to the contemplated marriage. Such promise, as stated in the recent legislation by the Holy Office, must be "bona fide," and involves more than the mere permission on the part of the non-Catholic party that the children of the marriage be baptized by a Catholic priest and go to a Catholic school. It involves attitude which courts cannot effectively control. They might as well attempt to enforce specifically the mutual promises of the parties to love, honor, and cherish each other. If the religious scruples of the non-Catholic after the ceremony result in the rejection of the promise, courts cannot control such scruples by injunction and contempt proceedings. They cannot solve the difficulties arising from the fact that one is a Catholic and the other non-Catholic. They cannot through their decree accord a preference to the Catholic religion. Despite occasional dicta to the contrary

in American cases, an attempt to enforce such a promise by injunction must therefore fail."

Father White fully recognizes the weakness of his contention as applied to the form of pledge which has been customarily required in the past. He therefore proposes a new form of pledge which incorporates some of the customary language usually inserted in written contracts and in particular makes the promise in form one between the parties and not one between the parties and the officiating priest or dispensing bishop. The writer of this review seriously doubts to say the least whether the new form will legally accomplish more than did the old. Form is important in doubtful cases but the writer of this series does not consider this as a doubtful case.

CARL ZOLLMANN*

Cases on Equity. By Walter Wheeler Cook. (2d ed.) West Publishing Co., St. Paul, Minn., 1932. Pp. xxi, 1222.

Professor Cook's first one volume edition of *Cases on Equity* appeared in 1926. The justification for a new edition after so short a period is found by the editor in the requests from the teachers who have been using the first edition. Accordingly, a new chapter has been added dealing with bills of peace, bills of interpleader, bills *quia timet*, and to remove cloud on title. Some half dozen cases and other material relating to the new remedy of declaratory judgments have also been included. The treatment of these subjects is confined to about fifty pages and must necessarily be suggestive. It is doubtful if a more complete treatment of such subjects would add to the usefulness of the volume.

The rest of the material has been brought down to date by the inclusion of some of the more important cases decided since the first edition. Most of these involve fact situations out of which interesting developments in the field of equity are taking place, i.e., the power of a court of equity to order acts to be done outside the court's territorial limitations, and the scope of the protection given the "right of privacy" by means of the injunction. Many recent cases involving other interesting questions or novel points are summarized or cited in the foot notes. The author has continued the admirable practice of including references to notes and comments in the leading law reviews. The many clerical and typographical errors appearing especially in the foot notes of the first edition have been corrected. Some of the new material replaces older cases. This material has been carefully chosen and represents a valuable improvement over the first edition. Some of the older cases have been shortened and a few have been omitted entirely but none of the important material dealing with the historical development of the subject has been left out.

No material change has been made in the general arrangement or analysis of the subject matter. An improvement might have been made in the arrangement of the chapter on the powers of the court of equity and on the principle governing the exercise of equitable powers. The arrangement in the former chapter is confusing to most students whose first insight into equity deals with a problem which is the last to arise in a law suit. In the other chapter a more detailed classification of the interests involved would be helpful. To those teachers who have used the first edition, this volume will be a welcome improvement.

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