

Testator's Family Maintenance in Australia and New Zealand (2 ed.), by R. J. Davern Wright, Sydney, The Law Book Company Ltd., 1966. xx and 306 pp., with Index (\$9.50 in Australia).

Testator's family maintenance in Australia and New Zealand is not an easy subject for a text book. There are many statutes and ordinances, no two quite the same; and there are many, far too many, cases which ought not to have been reported. Mr. Davern Wright has dealt with all the statutes and special rules of court and appears to have dealt with all, or substantially all, of the cases. The book is a useful work of reference and the second edition will be welcomed by the profession. The lawyer will find the authorities on the point which concerns him and there are criticisms of some of the decisions. Further, there are criticisms of the effect of some of the statutes and there are constructive suggestions for reform. There is, for example, some useful material at pages 39 and 40 on the problem of ensuring that the claims of infants are considered before those claims are frustrated by distribution of the estate.

But having one book to cover the divergent laws and procedures of nine jurisdictions leads to the book being less than wholly satisfactory for the practitioner in any one of the jurisdictions. Thus 104 pages, more than a third part of the text of the book, are occupied by discussions of procedures and by the texts of legislation and of prescribed or suggested forms. If, to take an example, an enquirer is interested in the statutes and rules, and the procedure, in New South Wales, only sixteen of these pages are relevant. Further, in these sixteen pages, divergent forms of originating summons are set out (pp. 211, 212, 256) and a dangerous form of affidavit by the applicant is suggested (pp. 212, 213). The form is dangerous in two ways. First, it invites the applicant to annex a copy of the stamp affidavit, which always includes a lot of expensive and irrelevant paper about valuations and so on. Secondly, it invites the applicant to say something about the financial position of the other beneficiaries and dependants of the testator: usually the applicant's ideas of these subjects are not only wrong but embarrassingly wrong, and anyway the rules put on the respondent the duty of placing these matters in evidence (rule 5). The applicant should wait and see whether he should, and can, supplement or contradict what the respondent swears to on these matters.

The text of the statutes of New Zealand and of the Australian States is a help when reading foreign decisions and is useful to the student of comparative legislation. In this respect the book would have been more useful if it had the text of the English Act and the Canadian Uniform Act.

Much of the book is taken up with summaries of the facts on which cases have been decided, but without discussion of the principle of the decision, nor its relationship to other decisions. This is perhaps the result of a natural despair of the great mass of intractable case law on matters of fact or discretion. But to see the cause is scant comfort to the reader. At p. 37 one reads that in *In re Newton*¹ McLellend, C.J. in Eq., "refused to grant an extension of time for application where to give leave would have resulted in prejudice and injustice to the beneficiaries". It would have been news indeed if the decision had been otherwise. The real significance of *In re Newton* was its application of one of the grounds for refusing an extension which Myers, J. discussed in *In re Dun*² and its effect in curbing the exuberant ideas, which had gained some currency, to the effect that it was hard to lose an application for an extension of time. *In re Dun*, however, although it lays down the working rules for deciding extension applications in New South Wales, gets but a "see also" reference after a short discussion of an unreported decision in Victoria.

¹ (1959) 76 W.N. (N.S.W.) 479.

² (1956) 56 S.R. 181.

The publishers have done their usual good job in book production. It would be better, however, if law books were all the one width and height. A sprinkling of smaller books such as this on one's shelves is untidy and a waste of space.

The book is one which a practitioner in the field ought to have and, if he follows up all the "see alsos" and "c/s" and so on, he may be confident that he has been referred to all the important decisions on the law of testator's family maintenance.

R. D. CONACHER*

* Barrister.

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