

Corporate Reorganizations; and Bankruptcy Forms and Practice (Book Reviews)

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tear of time, the attrition of the years? I perceive no constitutional ground upon which the one can be upheld and the other condemned."¹⁴

To those who have always hoped for the curtailment of the Supreme Court's power, this volume of Professor Corwin's will serve as aid and comfort. There are others, however, who in weighing the strictures against that tribunal, will at the same time recall the strength of the Supreme Court of the United States in sustaining the individual's right of freedom of action (*Stromberg v. California*);¹⁵ its recognition of the freedom of the press against state limitation or regulation (*Near v. Minnesota*);¹⁶ its intervention in the Scottsboro case (*Powell v. Alabama*).¹⁷ Not only in the matter of civil rights but in its effort to safeguard economic freedom has the Supreme Court justified the esteem which it enjoys in the American mind, and while the Court is condemned by some of its own members and by its friends for its decisions in the Agricultural Adjustment Act¹⁸ and Railroad Retirement Act¹⁹ cases, its great service in the N. R. A. case²⁰ which was decided by a unanimous court, must not be overlooked.

It would therefore take far more heinous conduct on the part of the Supreme Court than that outlined by Professor Corwin before thinking men should be willing to join forces with those who would end the power of the Supreme Court in matters of legislation. Nevertheless, it must be recognized that political institutions are not born into life with prestige, and that an attained prestige, however great, can easily be dissipated.

NATHAN PROBST, JR.*

CORPORATE REORGANIZATIONS. Three volumes. By John Gerdes. Chicago: Callaghan & Co., 1936, pp. xlv, 1-816; pp. xix, 817-1760; pp. ix, 1761-2859.

BANKRUPTCY FORMS AND PRACTICE. By Abraham I. Menin and Asa S. Herzog. New York: Clark Boardman Co., Ltd., 1936, pp. ix, 871.

Following the commercial debacle of 1929, a demand arose throughout the country for legislation to alleviate the distressed condition of the business world, saddled with debts and obligations incurred in the halcyon days of 1928 and 1929.

This demand first found expression on March 3, 1933, in the enactment of Sections 73, 74 and 75 of the Bankruptcy Act for the relief of the individual business man and farmer.

¹⁴ *Id.* at 384.

¹⁵ 283 U. S. 359, 51 Sup. Ct. 532 (1931).

¹⁶ 283 U. S. 697, 51 Sup. Ct. 625 (1931).

¹⁷ 287 U. S. 45, 53 Sup. Ct. 55 (1932).

¹⁸ *United States v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312 (1936).

¹⁹ *Railroad Retirement Board et al. v. Alton Railroad Co. et al.*, 295 U. S. 330, 55 Sup. Ct. 758 (1935).

²⁰ *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 55 Sup. Ct. 837 (1935).

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Although it was anticipated that similar relief would be enacted for the benefit of corporations, Congress temporarily deferred such action. However, after much agitation among mercantile groups, and after considerable deliberation and numerous hearings before the House and Senate Committees, Section 77B of the Bankruptcy Act was drafted and enacted into law on June 7, 1934. It was believed that thereby a panacea for corporate business ills had been found.

Its provisions opened up a new field of legislation and created the legal machinery for effecting adjustments and reorganizations of the most complicated corporate organizations as well as the simple corporation, and gave the court where the petition is originally filed exclusive jurisdiction of the debtor corporation and its property wherever located.

For years previous, the question of the adoption of a more simplified and effective means of reorganizing or effecting an adjustment of corporate affairs, had been seriously discussed and considered by legislators, educators and members of the bar.

These discussions eventually bore fruit in the enactment by Congress of the present Section 77B. Prior to its enactment, the only remedies available to a corporation in financial distress, were equity receivership or bankruptcy, with the distressful ancillary receiverships for preservation of assets in districts other than the district of original jurisdiction. Furthermore, in equity receiverships, the majority were without means of enforcing and compelling the minority to accept the terms of any proposed settlement or reorganization, and the only means of working out the reorganization was by a judicial sale of the assets, which were frequently bought in by the reorganization committee, as a result of which the minority received only a proportionate share out of the moneys realized on the sale of the assets. This method and the necessity for ancillary receivership proved costly, inadequate and ineffective to protect fully the interests of all parties, for there was no means of modifying the secured obligations of creditors without their consent, and, further, the proposed plan of reorganization required cash to pay off dissenting minority creditors.¹

In bankruptcy, a corporation could only effect a reorganization of its affairs with respect to its unsecured creditors, and was without power to disturb the rights of secured creditors or its stockholders.²

The provisions of Section 77B were intended to remedy the defects existing in the equity receivership proceedings and the bankruptcy proceedings by providing the means of enabling a corporation to effect a reorganization which would involve not only an adjustment and modification of the obligations of secured and unsecured creditors, as well as of stockholders of the corporation.

The author, in his comprehensive work, has thoroughly analyzed every provision of Section 77B and has presented the antecedents and background leading up to its enactment, the co-relation between the provisions of Section 77B and the provisions of the Bankruptcy Act and the rules and cases under equity receivership proceedings. In so doing, he has copiously studied his work with citations. This will be of considerable help and benefit to the prac-

¹ See *National Surety Co. v. Coriell*, 289 U. S. 426, 53 Sup. Ct. 678 (1933).

² *Myers v. International Trust Co.*, 273 U. S. 380, 47 Sup. Ct. 372 (1927).

itioner and student who will need a comprehensive work dealing with the law and practice of the proceedings under this section of the law; the entire subject being treated so as to facilitate the practitioner in his research upon this subject.

The notations are of great help, as the author has apparently digested and referred to practically every reported and unreported decision since the enactment of Section 77B.

The appearance of this work is very timely, particularly as the constitutionality of Section 77B has been upheld by the United States Supreme Court.³

The work, presented in the form of a treatise covering every phase of the subject matter, includes valuable references, including the Bankruptcy Act of 1898, General Orders in Bankruptcy, Federal Equity Rules, tables of reference to General Orders and Court rules, Bibliography, table of Cases, as well as the Corporate Reorganization Act.

This work is of real benefit to the practitioner and student, and is a valued contribution upon this subject by an author well qualified by experience and background.

* * * * *

The authority conferred upon the Supreme Court of the United States to prescribe all necessary rules, forms and orders as to procedure for carrying the Bankruptcy Act into effect, is derived from Section 30 of said Act.

Shortly after the Bankruptcy Law was enacted, July 1, 1898 (after an absence of any statute on bankruptcy since 1878), the United States Supreme Court prescribed, at its October 1898 term, Official Forms in bankruptcy for the general guidance of practitioners and those who intended to seek the relief provided for by this legislation.

Soon these Official Forms were subjected to criticism by the analytical form pleader. Some were claimed to be inartistically prepared and some were claimed to be demurrable. At least in one notable instance⁴ the United States Supreme Court, at the insistence of counsel, found it necessary to abrogate its own Bankruptcy Official Form No. 2 (and General Order VIII), which purported to authorize one or less than all of the partners to file a petition in bankruptcy against the partnership without the consent of the others, as being without statutory warrant and therefore of no effect.

The gentlemen who have collaborated in editing "Bankruptcy Forms and Practice" make bold to improve on the United States Supreme Court by furnishing with discriminating taste numerous forms covering nearly every phase of the practice of bankruptcy. This latest "Form Book" is a prodigious undertaking and includes forms of compositions, extensions in individual debtor proceedings, corporate reorganization proceedings as well as forms which may be used in the ordinary bankruptcy proceeding from inception to conclusion. Forms in corporate reorganization are included despite the fact that the Federal Courts have not as yet fixed definitely the practice and procedure under

³ Meyer v. Kenmore Granville Co., — U. S. —, 56 Sup. Ct. 405 (1936); Duparquet, Huot & Moneuse Co. v. Evans, — U. S. —, 56 Sup. Ct. 412 (1936); Tuttle v. Harris, — U. S. —, 56 Sup. Ct. 416 (1936).

⁴ Meek v. Centre County Banking Co., 268 U. S. 426, 45 Sup. Ct. 560 (1925).

Section 77B of the Bankruptcy Act by the adoption of official forms and the promulgation of appropriate General Orders and local rules. The work also embraces forms on review and appeal.

The "Practice Hints", notes and reminders are valuable, while the inclusion of the Bankruptcy Act, General Orders and Equity Rules will prove very helpful in serving well the needs of the practitioners in the field. The book is well arranged, compiled and indexed. It is a useful, practical handbook of forms, and should find a place on the library table of every bankruptcy and reorganization practitioner.

SAMUEL C. DUBERSTEIN.*

HOW TO CONDUCT A CRIMINAL CASE. Revised edition. By William Harman Black. New York: Prentice-Hall, Inc., 1935, pp. lxxvi, 483.

The last two editions of this work, the first "A Real Criminal Case", and the second "How to Conduct a Criminal Case", met with kind consideration from the profession and the author may again be assured that this edition will have the hearty approval of both the bench and the bar. As stated in its preface, legislative enactments since the last edition was printed in 1929 have made the third edition necessary. The book outlines in chronological order every step in a criminal cause from the time of the arrest of a defendant to the final disposition of the proceeding. Each separate step is described in its order and all alternative treatment is plainly indicated.

Based upon the author's experience as Acting District Attorney in the largest criminal law office in the world and thirteen years as a Trial Judge in the Supreme Court, it may be described as a ready reference to important and much used criminal procedure and forms, thus giving a lawyer who devotes his attention to civil practice an extremely useful volume in calling quickly to mind something that he once knew but has since forgotten. The book can be relied upon to give purposeful direction to a layman as well as to a practicing attorney. A graphic index reference chart, visualizing an entire criminal proceeding, accompanies the book, and a cursory glance at this chart enables the reader to determine the status of a criminal cause with very little effort. In writing the book it appears to have been the purpose of the author to place in the hands of the public a practical working manual of criminal procedure in plain, ordinary, everyday language with a view to a complete understanding of every point which may be raised in the course of a criminal proceeding from the time of the commission of the crime to the moment of the execution of sentence or acquittal of the defendant.

Technical motions, such as motions to dismiss indictments and motions to inspect the Grand Jury minutes, are treated completely and in a very understandable and colloquial fashion. An attorney who has devoted his attention to civil causes and is preparing for the trial of a criminal proceeding may ascertain by a reference to its pages such commonplace information as the

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