

Law and Practice in Corporate Control (Book Review)

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requiring the establishment of a property right before a court will take jurisdiction is properly exploded as unworthy of a tribunal which prides itself on shaping its decrees to effect the remedy of a substantial wrong. Personally the reviewer found this subject the most interesting of those treated, but he feels that legal precedent, in this state at least, is opposed to the author's conclusion.

Later chapters treat of the religious status of the child when one or both parents are dead and the value given religion by the courts in considering what domicile would be for the best interest of the child. The author shows that concerning these questions no definite rule can be laid down since the decisions are in hopeless confusion.

There is also included in this volume a compilation of the statutes of the various states involving the subjects treated and the author closes by demonstrating that public policy should favor rather than hinder the enforcement of these ante-nuptial agreements.

This little volume is worthy of a place on the bookshelf of both lawyer and priest. The commendation in its preface, written by Hon. Clarence E. Martin that, "Our legislatures and courts and the legal profession in English-speaking countries are under a debt to the author for this discussion of an important point of law" is heartily concurred in by the reviewer.

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LAW AND PRACTICE IN CORPORATE CONTROL. By Chester Rohrllich. New York: Baker, Voorhis & Co., 1933, pp. vii, 268.

One may never know what decision a growing child will reach when confronted with a particular problem. But if careful attention is given toward an understanding of the child's habits and environment, past and present, certain predictions can be ventured with a fair degree of certainty. And just as this understanding is necessary in comprehending the decisions of a child so it is needed in reaching the probable decision of judges in matters presented for their consideration. "The practice of law," as Mr. Rohrllich observes, "involves the art of prediction," which as a consequence requires a careful analysis of prior decisions, a consideration of the *mores* of the time and an understanding of the judicial temperament. The author has made a distinct contribution to the rather scant compact information concerning corporate control. The unprecedented growth of corporate entities in the past decade left much to be hoped for in the way of a guide to the successful operation of corporate management. Much has been written concerning formal corporate practice but the task of formulating a basis for understanding the intricacies of corporate machinery seems to have been left to law professors and writers such as Mr. Rohrllich whose contributions to legal periodicals in this instance served as a source for the present text. That these contributors have per-

formed a useful task is reflected in the increasing number of references to legal periodicals found in judicial decisions in the past few years. Mr. Rohrllich's efforts indicate a thorough search of legal periodical contributions on all phases of corporate control and it is gratifying to note the repeated references to periodical comment on judicial decisions pertaining to this phase of law.

Chapters One and Two are concerned with problems of corporate and government control. Since the publication of this volume the "milk"¹ case has been upheld by the Supreme Court as has the "Minnesota mortgage moratorium" case.² These might well be considered "signposts on the road"³ to what Professor Finkelstein has alluded to as the restoration of the Court in the scheme of things contemplated by the framers of the Constitution.⁴

Chapter Three is devoted to a discussion *inter alia* of majority and minority control in corporate voting, the procedure in testing elections and in enjoining voting rights, the operation of voting trust agreements and the matter of voting and non-voting stocks. Though an agreement among stockholders to elect certain directors is valid, our Court of Appeals has declared, since the publication of this volume, that a contract precluding a board of directors, at the risk of incurring legal liability, from changing officers, is illegal and may not be enforced.⁵

The matter of protecting the stockholder by statutory privilege, such as the right to inspect the books of a corporation and, by agreement, to authorize protective committees to act on behalf of individual minority stockholders, is treated in Chapters Four and Five. It is interesting to note the mass of litigation that has come to pass over this phase of corporate control and Mr. Rohrllich's abundant citation of cases and articles in point will be helpful to the lawyer whose problem falls in that category.

Chapter Six contains a practical analysis of the operation of equitable actions by minority stockholders with relation to dividends and salaries, new stock issues, sale of unissued stock, amendment of charter and by-laws, the sale, consolidation, merger, reorganization and dissolution of corporations and the practice and procedure relative thereto. One would do well to advert to the author's analysis of these matters before proceeding with the formal task of initiating a suit or other proceeding.

¹ *Nebbia v. New York*, 289 U. S. —, 54 Sup. Ct. 505 (1934), referred to in the text at page 18, footnote 25.

² *Home Building & Loan Association v. Blaisdell*, 289 U. S. —, 54 Sup. Ct. 231 (1934).

³ Cardozo, *J.*, in *Allegheny Col. v. Nat. Chautauqua Bank*, 246 N. Y. 369 at 374, 159 N. E. 173 at 175.

⁴ Finkelstein, *The Dilemma of the Supreme Court* (1933) THE JOHN DAY PAMPHLETS, p. 30: "A steady flow of minority opinions from the hands of Holmes and Brandeis, and more recently of Stone and Cardozo, point the road to the true position of the Court in American political life—to its restoration in the scheme of things contemplated by the framers of the Constitution. The Court will become again a needed check on legislative excess and will permanently relinquish its right to act as a super-legislature. Mr. Justice Holmes has many times reiterated this view, pointing out that the agreement or disagreement of particular judges with any legislative policy 'has nothing to do with the right of the majority to embody their opinions in law.'"

⁵ *McQuade v. Stoneham*, 263 N. Y. 323, 189 N. E. 234 (1934).

The remaining chapters deal with creditors' control, operating receiver-ships, reorganizations and the matter of closed corporations.

A table of cases and a carefully prepared index (not infrequently missing from texts) enhance the value of the volume.

One comes from reading such a text as this with a feeling of security—of knowing that not only has the author made an intensive search in the field before writing but that the writing represents an accurate analysis of the problems in corporate control. This praise may seem to approach flattery but it is genuinely felt and is something that the reviewer has not experienced in some time.

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