

Cases and Materials in the Law of Corporate Reorganization (Book Review)

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able hands of Professors Carr and Finn of the Fordham Law School. And they have done the job well.

A close inspection of this work makes one aware of the fact that this is a most unorthodox law book. For instead of page on page of printed matter explaining various points of the law there are a few charts which explain themselves at a glance. For example, at page 283, in a series of charts the revisers dispose of many of the difficult passages on counterclaims found in the Civil Practice Act.⁶ At another point the student is shown, by a succinct summary, of the steps to be taken in a jury trial, as well as in a non-jury trial.

In this present edition Messrs. Carr and Finn have eliminated obsolete passages, revitalized archaic ones and brought citations, footnotes, case digests and statutes up to date. As an original contribution they have added a chapter on Appeals, and have also supplied problems for the student to solve, the charts mentioned above, suggested reading assignments, typical "True-False" questions of the "Bar Examination" type, and forty new forms. These additions should certainly tend to stimulate in the student a real interest in what might otherwise seem a dry, tiresome and difficult study.

The book consists of 1,088 pages, of which twenty-five are devoted to its table of contents and 100 to the index. The printing is on thin paper, the flexible fabrikoid binding is durable, and altogether the book is an unusually easy one to handle.

Naturally it is not a complete book on Practice, but it covers a broad field nevertheless. The plain statements of the different steps to be taken in relation to the provisional remedies, in bringing a case on for trial, in the trial itself, in entering judgment, in many incidental and collateral proceedings, and in conducting an appeal, are at once the open sesame to the average student who knows rules of law, but now, for the first time, is learning how to use them.

RAYMOND C. WILLIAMS.

CASES AND MATERIALS IN THE LAW OF CORPORATE REORGANIZATION, by William O. Douglass and Carrol M. Shanks. St. Paul: West Publishing Co., 1930, pp. vii, 559.

With the advent of the "functional approach" group specialization courses have become prominent in the curricula of our principal law schools. Greater recognition is being given to particular fields of practice. Instead of a four-hour course in Corporations being practically all the students receive in the field, it is now possible for students particularly interested in corporate problems to carry on through many related subjects. At least, it would be feasible to make this additional material available in the third year without resulting in narrow specialization. It is with this program in general, and particularly with the courses given in Business Units at Yale, that the present edition, full to the bursting with painstaking research and thought, fits in nicely.

⁶ C. P. A., 266-271.

In point of fact this casebook goes one step further. Where "group" courses were employed, materials on reorganization were included in a general course of corporation finance.¹ A smattering of knowledge in this difficult field, however, was of little value, so that a specialized course of this nature became essential. Corporate reorganization is a field which has evinced increasing importance of late years. The business depression and significant economic trends have also stimulated the growth of the law in this subject. Hence the introduction of a case book in this new field is doubly welcome. If the segment of the law dealt with forms a unified whole, and presents material insuring a useful and teachable course, more could not be expected. Viewed by this standard, an excellent piece of work has been accomplished and the authors' purpose in focusing attention on a vital problem in present-day corporation law has been effectuated.

Although of a pioneering class, the selection and classification of the material have been done with exceptional care and skill. Because of the novel method of approach, the reviewer feels it worth while in setting forth the arrangement of the book at length.

The book is divided into two parts, the first of which deals with "the process of refinancing, through the medium of an equity receivership, of insolvent concerns, or of enterprises under financial stress."² The primary chapters are concerned with pre-receivership and receivership claims respectively, considering the relative positions of claims arising during, and before the receivership, as well as the relative legal priorities of the respective classes of creditors. Tantalizingly brief notes by the editors usually inaugurate each chapter. A reorganization agreement is then set forth and two sections dealing respectively with fairness of plan and expenses of reorganization managers follow. Intervention and barring of claims of dissenters constitutes chapter four, which is followed by a copy of bondholder's deposit agreement. Cases discussing the power of committees and withdrawal of deposits is next in order. Part I is brought to a close by a section on the necessity of judicial sale,³ together with five well-selected opinions on upset price. The final section contains a study of the liability of the new company.

"Voluntary Reorganization," is the title of Part II. It is launched by a creditors' agreement between the company, the creditors' committee and those advancing new money for the financial rehabilitation. Leading cases on the liability of creditors, trustees and assignor follow. The legal problems encountered by creditors' committees is concluded in a section concerning their priorities. The final chapter on the reorganization plan points out its similarity to the plan discussed in equity receivership. Four succinct cases on fairness revealing a keen and incisive analysis of the problem terminates the book.

The reviewer ventures to suggest that the usefulness of the volume would have been substantially increased by the inclusion of more concise text material, extracts of leading law review articles, problem cases, editorial queries and digested cases. Law review comments on current cases not printed in the book

¹ BERLE, CASES AND MATERIALS ON CORPORATE FINANCE (1930).

² P. iii.

³ The Consummation of a Refinancing Program Pursuant to a Plan Making Use of an Equity Receivership, p. 439.

would give the student a criticism of the prevailing views and add to the number of cases considered. It is doubtless preferable to the questionable gesture of giving citations at the conclusion of the opinions. Though the integration of legal and non-legal material might have lengthened the book, its employment would have given added vitality and reality.

Emphasizing "legal problems incident to the preparation, promulgation and consummation of the reorganization plan,"⁴ to the exclusion of the various procedural questions has been the purpose of the authors, yet it seems reasonable that the student should have had an acquaintance with the available statutory material. It is unfortunate that discipline in the manipulation of statutory provisions does not find a larger place in the law school. A section should also have been devoted to the income tax⁵ as it affects reorganization since the latter transaction involves tax problems of great import. Failure to carefully study the income tax may often mitigate the effectiveness of a practical set-up.⁶ The exclusion of several textbook opinions and references to the practices and experiences of other countries would prove helpful.⁷

On the other hand, a major feature of the book lies in the intelligence and workmanship which has gone into its construction. Its finished character and uniform lack of indifferent work is refreshing. Each case has been made to contribute to the main objectives and has expertly been surrounded with an aura of the most controversial matters in the topic studied. Computation indicates that only eight cases are of a vintage before 1900 and fully one-half of the casebook is made up of those decided after 1920. Concluding each case are notes crammed with references to law review comments, annotations and to most of the standard business treatises. The dual functions of giving information and the presentation of thought-provoking problems have been combined with marked success. It is only within the last ten years that the corporate bar has been able to familiarize itself adequately with the legal aspects of reorganization. Evidence of the growing importance of this subject is seen in these cases. Without doubt, no teacher, student or lawyer interested in corporate affairs can afford to be without this valuable collection of cases.

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⁴ P. iii.

⁵ The importance of the income tax as related to reorganization problems is readily visible in a recent textbook: MILLER, HENDRICKS and EVERETT, REORGANIZATIONS AND OTHER EXCHANGES IN INCOME TAXATION (1931).

⁶ These cases might have been included with utility: *U. S. v. Phellis*, 257 U. S. 156, 42 Sup. Ct. 63 (1921); *Rockefeller v. U. S.*, 257 U. S. 176, 42 Sup. Ct. 68 (1921); *Marr v. U. S.*, 268 U. S. 536, 45 Sup. Ct. 575 (1925).

⁷ In the chapter on dissenters, reference to the current English practice of dealing with those who oppose reorganization is illustrative.