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Supplement to Cases and Materials on the Law of Private Corporations

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SUPPLEMENT TO CASES AND MATERIALS ON THE LAW OF PRIVATE CORPORATIONS.
By Louis Prashker. Brooklyn: St. John's University School of Law,
1941, pp. 295.

The law is a living thing. Cognizant of this, Professor Prashker has valiantly tried to bring up to date his *Cases and Materials on the Law of Private Corporations*, which work first appeared in 1937.

New statutes have been enacted, the construction and application of which must yet await the labored course of judicial digestion. These new problems continue to be poured into the machinery of litigation, decision and appeal and emerge while the student and the practitioner alike still struggle to accommodate themselves to decisions dealing with the statutes as they stood before amendment.

The tree of corporate law is an ever-broadening one. State and federal regulation of securities, issues and transactions reach out with their spreading roots, each creating their own offshoots of problems and perplexities. The trends of court decisions run in no uniform direction. Conflicts multiply in the opinions of the state and federal judiciary, although the procedure in the courts of the latter has been greatly aided through the "New" Federal Rules of Civil Procedure which now operate to simplify outmoded technicality and burdensome formality.

Has a New York corporation the right to declare dividends by creating a surplus through revaluation of assets? On this question the author gives us the case of *Randall v. Bailey*, 23 N. Y. S. (2d), *aff'd*, 262 App. Div. 844 (page 191). This case has been the subject of treatises appearing in the St. John's, Harvard, N. Y. U., University of Pennsylvania and Yale Law Reviews. These make good reading and helpful study, but tomorrow we awake to face some decision, or a line of them, reversing, contradicting or distinguishing our "leading" case and upsetting our concept of what we think it means.

Opinions of courts may sound convincing when they recite lists of cases in jurisdictions other than New York in order to give strength to decisions. Careful examination, nevertheless, often proves disappointing. Many times it discloses contrary decisions which cannot on all, if on any, points be reconciled. Examples of this are not limited to any one subject. However, let us take by way of illustration the matter of accumulated unpaid dividends on preferred shares. A volume might be devoted exclusively to this topic and produce only the bewildering result of recording the winding trails that lead to that uncertain destination which may yet spell the life or doom for preferred stock investment as a factor in our economic system. In this regard, glance at the assured manner in which the court in *Davison v. Parke, Austin & Lipscomb, Inc.*, 285 N. Y. 500 (page 177) and *Wiedersum v. Atlantic Cement Products, Inc.*, 261 App. Div. 305 (page 180) parades the list of supporting cases in jurisdictions outside of New York. In this list we find references to cases in Delaware, New Jersey, Ohio and North Carolina reports purporting to hold that the right to accumulated unpaid preferred stock dividends is a "vested" right and that such dividends cannot be eliminated by corporate amendment. The ingenuity, however, of "voluntary" recapitalization plans in eliminating dividends is countenanced, we will find, in Pennsylvania, in Illinois, in Ohio and in Delaware.

Soon we will have added to the confusion some decisions which may either permit the elimination of such dividends or disallow them through the convenient device of a "technical merger" with wholly-owned subsidiaries. One decision in Delaware which deals with this problem gives the indication that in all events such a recapitalization or "technical" merger must be found to be fair, if it is to be held valid.

Questions of this nature are dealt with in Professor Prashker's Supplement in that chapter bearing the title of "The Rights of Shareholders". Full consideration to such a comprehensive subject cannot possibly be given within the limits of the eighty-six pages there devoted to it. This, however, is not the treatment intended. The chapter, one of thirteen in the volume, covers more pages than any other one and can at best but furnish the basis for study by touching upon the case high-lights and by focusing attention upon the major questions presented in the case analyses.

Professor Prashker is a legal scientist. He gives us an impartial clinical view of the law in which there is altogether lacking the ardor or partisanship of the pamphleteer. The absorbing pen-style of the advocate is missing, but there is the compensating advantage also of the absence of bias. He has tried to give us the unadulterated picture without any effort to condemn or commend corporate management or minority stockholders, without seeking to criticize regulatory agencies or to bemoan incessant legislative changes in the statute law.

When it was my privilege to review *Cases and Materials on the Law of Private Corporations* in 1937, its condensed form attracted me. The Supplement carries out this function of being a "handy" reference work rather than a cumbersome armful of volumes. In order to accomplish this, however, as I have noted, full discussion and coverage of the field must be sacrificed to some degree.

The solution for this may be to devote an entire volume to any one of the major subjects now confined to one brief chapter. "The Rights of Shareholders" would be an excellent subject for an entire work, enhanced, if practical, by an annual supplement and annotations. Such an undertaking would, it is submitted, be merited by the steadily increasing lay and professional interest and attention being accorded this spreading branch of the law. It has outgrown the confines of a "supplement", because now for a proper perspective we cannot limit our examination principally or alone to the New York decisions.

The questions involved and their far-reaching effects on investors, industry and economics should transcend state lines and provincial view-points. The development of such a study would present a major undertaking of serious proportions. The result, however, would be most welcome and given over to this author of "The Supplement" it could be assured the treatment which only experienced and understanding hands can lend to it.

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