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Liability of the Trustee under the Corporate Indenture (Book Review)

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BOOK REVIEWS

Editor—WARREN E. COLLINS

LIABILITY OF THE TRUSTEE UNDER THE CORPORATE INDENTURE. By Louis S. Posner. New York: Arlington Press, Inc., 1929, pp. 120.

This volume, originally printed as an article in the *Harvard Law Review*, will serve as a very helpful and guiding handbook for the trust officers of our modern trust companies. The author treats of a subject which at the present time is still shrouded in doubt and for which the courts of this country have as yet established only the barest principles. The treatise has been thought out most carefully and logically giving evidence of an unusual amount of thought, research and study on the part of the author.

From a practical point of view there is no device which has been availed of to a greater extent in the field of corporate financing than that of a trusteeship under a corporate indenture. To satisfy this growing need, as Mr. Posner points out, the trust company has become the choice of business men to serve as corporate trustee in this capacity, not only because of its financial reliability but because it gives a popular saleable quality to the securities which otherwise they might not have. Having accepted this confidence and trust, the trust company of today must determine not only for its clients but eventually for the courts the exact nature of its duties and the corresponding extent of its liabilities. It is in this light that the author's work renders itself most valuable. Trained as a lawyer and experienced in the field of corporate financing Mr. Posner has ably traced the legal as well as the practical development of his subject. He goes further, however, when drawing upon the fund of his technical and practical training, he outlines the trend of future decisions.

The position of the corporate trustee is an anomalous one. Practically it serves two masters, the settlor of the trust or the mortgagor on the one hand, and the bondholders for whose benefit the security is created on the other. Mr. Posner points out that the relationship between the trustee and the mortgagor is largely determined by the contract establishing the trust. However, when he considers the duties of the trustee to the bondholders the author goes beyond the realm of contract and into the field of trust relationship. He ultimately determines that the status of the trustee in this capacity is *sui generis*, being a hybrid between a mere depository and a trustee in the strict sense of the term.

In defining the duties of the corporate trustee the author has carefully balanced all the interests involved. From the point of view of the mortgagor he emphasizes the necessity of a comparatively free hand in the operation and conduct of its business unmolested by any unreasonable interference on the part of the bondholders or the trustee. For the trustee, the author considers the burden of compelling it to remain in active contact with the business of the mortgagor, especially when the compensation of the trustee does not warrant such diligence.

More specifically, Mr. Posner first discusses the matter of authentication of bonds and recordation of the mortgage indenture. He then considers the subject of the creation of the security, its release and protection; finally the duty of the trustee after default in respect of the enforcement of the rights of the bondholders against the mortgagor.

The volume is written with unusual clarity and conciseness supplemented by copious explanatory notes and citations. It would well compensate the effort of every banker and lawyer interested in the field of corporate financing to spend a few hours with Mr. Posner's very interesting and valuable book. It is hoped that more light will be forthcoming from his able pen.

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LAWRENCE ON EQUITY JURISPRUDENCE. By Frederick F. Lawrence. Albany: Matthew Bender & Co., 1929, Vols. 2, pp. 1407.

In his preface the author leads his readers to believe that he presents to them the principles of equitable jurisprudence with its historical and analytical setting, and its limitations when it conflicts with other principles. This he has not done, and has thereby succeeded in contributing to the literature on the subject a work that is not only readable but may well become authoritative. With the philosophy and the metaphysics of the Law he has but slight concern. He avoids the controversial and the subtle refinement and distinction, and almost disproves his own statement of the well-known proposition, that the very objective of equity precludes an exposition of its doctrines by codification and the enunciation of fixed rules. While there is a strong suggestion of dogmatic conclusion running throughout the work, yet one is left with the impression that Mr. Lawrence has merely reduced the recognized principles of equitable jurisprudence to simple formulae. He is fortunate in possessing the knack of embodying a substantial part of the law on a given topic, sometimes in a single paragraph or sentence. Take the following from his chapter on Corporations:

"A direct consequence of the relation is that he is precluded from deriving any secret advantage or profit in his transactions with or in behalf of the corporation, unless he makes a full disclosure to each individual stockholder to whom stock may afterward be sold as a part of the original financing plan, or to an independent board of directors free from his influence and competent to represent the corporation, or procure subsequent ratification after disclosure by stockholders of the completely established corporation, or himself subscribe to all the stock."

The two volumes have 71 chapters and refer to over 10,000 cases. The labor and the efforts of the author to give the principles of equity in accord-