

Washington University Law Review

Volume 25 | Issue 4

January 1940

Review of “The Law of Bankruptcy Reorganization,” By Thomas Finletter

Thomas C. Billig
Catholic University of America

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Recommended Citation

Thomas C. Billig, *Review of “The Law of Bankruptcy Reorganization,” By Thomas Finletter*, 25 WASH. U. L. Q. 628 (1940).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol25/iss4/3

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by recollections. The step taken by Andrew Jackson in dealing with South Carolina's attempt at nullification is characterized by Professor Hockett with a terse exactness which makes it an offset to the whole course of state and slave ascendancy in the Supreme Court of Chief Justice Taney:

If Jackson had supinely acquiesced in nullification, a chain of events would have followed which might have made the preservation of the Union impossible in 1861. Jackson, indeed, may be said to have made Lincoln's role possible.

The chapters dealing with constitutional history after the Civil War have an especial value today because they treat extensively of the relationship between civil liberties and war-engendered passions. Chief Justice Taney is given credit for a sincere defense of the rights of citizens during the War, when he was being overridden as a judicial ally of the seceded states; and the later return of the court to support of civil rights, in *Ex parte Milligan* especially, is characterized as a posthumous justification of Taney. At the same time, quotations from the press of the day, and from congressional leaders, suggest the frailty of the judicial arm as a protection in wartime of rights that theoretically belong to Americans in both peace and war.

The vast field of constitutional history covered by the industrial and corporate development after 1876 is left to the third volume, not yet published. It is foreshadowed, of course, in the discussion of the transition from the Marshall to the Taney court—from the *Dartmouth College* case to the *Charles River Bridge* case. In dealing with the economic aspects of the American Revolution, Professor Hockett points out that parliamentary supremacy, against which the colonies revolted, was really supremacy by the same English mercantile class which in 1688, in conjunction with the landed interest, had used parliament as a weapon against the king. Dealing with the next great crisis, Hockett gives weight to the impact of slavery upon American constitutional development. The ultimate value of his constitutional history will depend upon his treatment, in the volume yet to be published, of the economic forces which have dominated the constitutional struggle of the last three-quarters of a century. If he can deal as realistically, at close range, with the forces which have enjoyed judicial supremacy since 1876, as he has dealt with those which attempted to force parliamentary supremacy before 1776, the work will take high rank as a study of the forces governing our constitutional development, as well as an accurate outline of institutional growth under the document whose not-so-fixed terms became effective in 1789.

IRVING BRANT.†

THE LAW OF BANKRUPTCY REORGANIZATION. By Thomas K. Finletter. Charlottesville: The Michie Company, 1939. Pp. x, 994. \$10.00.

One of the most interesting developments in the legal literature of the last decade has been the great increase in the number of worthwhile books in the field of insolvent estates. Of these, a full share have been devoted to corporate reorganization, the general subject covered in the volume under review.

† Contributing Editor, St. Louis Star-Times.

This abundance of literature is in marked contrast to the condition which existed ten years ago when the first important receiverships of the depression were filtering into the metropolitan law offices. At that time the lawyer was compelled to dig long and deep in his search for receivership authorities. True, many of the landmarks in receivership law had been decided long ago before the market crash of 1929. But it is also true that most of these decisions were still buried in the reports. Also considerable receivership literature had appeared prior to 1929 in the law journals, particularly the Columbia Law Review, and at least two series of important addresses on corporate reorganization had been delivered before the Association of the Bar of the City of New York. Even so, it took scholars such as Professor Finletter, and some half dozen others who might be mentioned, to pull these decisions and papers out of their original setting and make them more accessible to practitioners and law students. This is particularly true of the law review material. It has not been so long since the practitioner who used the legal periodical index in his research was indeed a rare animal.

Finletter on *The Law of Bankruptcy Reorganization* is vastly more, however, than a symposium of authorities. Rather, it is a scholarly analysis of all available authority bearing on the major problems encountered in the field. The book appeared first two years ago under the title, "*Principles of Corporate Reorganization*." As such it was most favorably received by the reviewers. This is not surprising because, as previously indicated, the author not only sets forth the source material; he also penetrates, analyzes, and synthesizes this material in a manner only possible for one who is at the same time a law teacher and also an active practitioner in the very field he teaches. This dual role of the author brings to his book a flair and a style which is most refreshing. The academic shades are present but Wall Street runs along the campus. The theoretical aspects of the subject are not neglected, but Tom Finletter also tells one the answers—just in case there is a client in the outer office waiting to be enlightened.

The table of contents, which is adapted from the earlier book, gives some indication of the wealth of material to be found in the chapters which follow.

Chapter I is entitled, "The Origins of the Reorganization Provisions of the Bankruptcy Act." Some of this material appeared in the former book but the latter part of the chapter has been entirely rewritten. Here Professor Finletter digs into the extensive history of the federal equity receivership and shows how the federal courts had the choice of two adjective precedents on which to build the technique of the "reorganization receivership." The first of these precedents was "the well established practice of equity assuming jurisdiction over and, if necessary, appointing receivers of the estate of a decedent at the suit of a creditor,"¹ who did not have to be a judgment creditor. The existence of a limited fund, less in amount than the claims against it, was the basis of jurisdiction. Curiously enough, however, the federal courts did not pursue this theory to its logical conclusion in the

1. See p. 5.

corporate receivership cases, but instead turned to the second precedent which was linked with the judgment creditor's bill that sought to levy on equitable assets. Thus the "reorganization receivership" of the federal courts, which saw its hey-day in the early years of the depression, grew up through such decisions as *Hollins v. Brierfield Coal and Iron Co.*,² *Central Trust Co. v. McGeorge*,³ and *Matter of Reisenberg*,⁴ but eventually forecast its own doom in *Harkin v. Brundage*,⁵ *Shapiro v. Wilgus*,⁶ *May Hosiery Mills v. F. & W. Grand 5-10-25 Cent Stores*,⁷ and *Coriell v. Morris White, Inc.*⁸ Of course this history is, in the year 1940, a twice-told tale but Professor Finletter tells it well, particularly through the medium of footnotes packed with references to leading decisions and law review comment; and in the opinion of the reviewer, no lawyer can possess more than a bowing acquaintance with Chapter X of the Chandler Act until he learns something of the antecedents of that already famous chapter.

After his plunge into receivership history, the author explains the inherent weaknesses of the federal receivership in equity as a corporate reorganizing device,⁹ and shows how and why Section 77B and its successor, Chapter X, became part of the Bankruptcy Act since 1934.

Chapter II, entitled "The Petition," includes a discussion of what a petition filed under Chapter X or Chapter XI should contain, where it should be filed, and particularly what types of business organizations are amenable to either proceeding. Two points concerning this chapter—which are equally applicable to the remainder of the book—should be noted. In the first place, leading cases, decided under Section 77B, which established important precedents for Chapter X, are noted and discussed; in the second place, the text of the chapter follows the statute closely enough to be a valuable guide to the practicing lawyer who may be quite unfamiliar with the subject.

Chapter III concerns "Jurisdiction of the Reorganization Court"; Chapter IV, "Administration of the Estate Pending Reorganization"; and Chapter V, "Claims Against the Estate." All of these chapters furnish ample proof of the rich scholarship of the author. At least half of the material offered consists of footnotes. These bulge with references to law review sources and to a vast array of authorities decided under equity receivership practice, or under Section 77B, or sometimes in bankruptcy of the orthodox liquidation type. And, what is more, Finletter's footnotes are not string citations which the reader must consult before he can have any great understanding as to

2. (1893) 150 U. S. 371.

3. (1894) 151 U. S. 129.

4. (1908) 208 U. S. 90.

5. (1928) 276 U. S. 36.

6. (1932) 287 U. S. 348.

7. (D. C. Mont. 1932) 59 F. (2d) 218, rev'd in *May Hosiery Mills v. United States District Court* (C. C. A. 9, 1933) 64 F. (2d) 450.

8. (C. C. A. 2, 1931) 54 F. (2d) 255, rev'd in *Nat'l Surety Co. v. Coriell* (1933) 289 U. S. 426.

9. The reviewer once attempted to plead the case of the federal receivership in equity, although the hands of his client were already slightly soiled. See Billig, *Corporate Reorganization: Equity v. Bankruptcy* (1933) 17 *Minn. L. Rev.* 237.

what these authorities decided. Instead, the holding of the particular decision is frequently stated; comparisons are made also between decisions and between the views of various writers who have considered the point. In short, a study of both text and footnotes in these chapters is a thoroughly satisfying intellectual process.

Beginning with Chapter VI the author enters the nebulous field of "The Reorganization Plan or Arrangement." In Chapter VII he discusses "Valuation." Chapter VIII concerns "Intervention and Appeals"; Chapter IX, "Collateral and Semi-collateral Attack." Chapter X, "Dismissal of the Proceedings and Adjudication," closes the text. The Bankruptcy Act of 1898, as amended by the Chandler Act, the General Orders in Bankruptcy, a table of cases and an excellent index complete the book.

Space does not permit a detailed consideration of the contents of these later chapters. But if one will study the chapter on the reorganization plan as a sample, he will find it written against a marvelous background which contains a reference to virtually everything worth while which has been written either by court or commentator since the *Boyd* case.¹⁰

Once more Professor Finletter has done a grand job for which he deserves the eternal gratitude of his colleagues in the insolvency field.

THOMAS C. BILLIG.†

LAW OF LANDLORD AND TENANT, with Forms. By John Emerson Bennett. Charlottesville: The Michie Company, 1939. Pp. xxi, 810. \$10.00.

For such a book as Mr. Bennett set himself to write, there is a pressing need. It was a twofold need, calling on the one hand for a concise summary of the rules and principles of landlords' and tenants' law, and on the other for a set of forms suggesting solutions to the more prevalent of drafting problems. Mr. Bennett's plan to combine both within a single volume, if competently executed, would answer a general prayer.

The field of law to which Mr. Bennett addressed himself has not wholly lacked competent treatment. There have been the periodic new editions of Foa and Woodfall, the English classics; there is the scholarly treatise of Tiffany; there is the two volume encyclopedia appearing recurrently under the name of McAdam; there is the draftman's reference work on lease clauses compiled by Lewis.

None of these sources has satisfied the needs of the ordinary practitioner. Obviously an English reference can be of only secondary utility to an American lawyer, and Tiffany's excellence is dimmed by the want of any revision since 1912 (his book on Real Property does not incorporate his *Landlord and Tenant*). Not so obviously, McAdam and Lewis fail to satisfy the lawyer outside New York because they are so heavily weighted with New York decisions. Even if they be regarded as suitable outside their state of origin, their total of three large volumes has exceeded the need and the purse of the non-specializing solicitor.

The lawyer turns expectantly to Mr. Bennett's new work. It disappoints

10. *Northern Pac. Ry. v. Boyd* (1913) 228 U. S. 482.

† Lecturer in Law, Catholic University of America.