suggest that, even as the legal responses of an organized society to a new problem carry costs in consequence of delay, those responses entail other—and equally detrimental—costs if they continue unabated after the problem itself has disappeared? Mr. Hunt's telescope may come to the hand of his successor with the other end offering the more accurate angle of vision.

What is certain is that this kind of historical study of the law's operation will always have a valued place. Apart from its intrinsic worth as a factual re-creation of the events of a particular time and place, it is instructive for later generations of law-makers wrestling with the eternal problem of making the law responsive to changing events. Mr. Hunt's book does both in ample measure, and serves as additional confirmation of the wisdom of those at the University of Wisconsin, notably Willard Hurst, who thought some years ago that there were rich veins to be quarried in American legal history, and that the prospecting could as profitably be done in their own back yard as in some more remote region.

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Close Corporations. By F. Hodge O'Neal. Chicago: Callaghan and Company, 1958. 2 Vols. Vol. 1: Pp. xx, 369; Vol. 2: Pp. vii, 437. $30.00.

The field of corporate law is the subject of many volumes, but these two erudite volumes are the first to be devoted to the subject of the "Close Corporation," and it is the close corporation, after all, which is the concern of most lawyers who have corporate clients. Professor F. Hodge O'Neal has carefully culled from the vast body of corporate law those portions pertaining to the close corporation. He has assembled them in logical order, and with a clear analysis and an excellent set of specimen forms has presented them to us for ready reference.

Control devices and flexible arrangements are often of fundamental importance in the close corporation. Heretofore, the lawyer wishing to counsel his clients in this area found it necessary to resort to a variety of sources, as well as to his imagination. Now, by reference to this work, even the lawyer with relatively little experience can counsel his corporate clients regarding a multitude of choices in flexible arrangements. The experienced corporate lawyer will also find a great deal of assistance in Professor O'Neal's having tied together lucidly and expertly varied close corporation problems, including those with tax consequences, and presenting suggested solutions, some of which might previously have been thought about only vaguely, if at all.

The term "close corporation" is used in this book to mean a corporation whose shares are not generally traded in the securities markets. Professor O'Neal points out that while this term usually designates a small enterprise, many close corporations have tremendous assets and operate all over the world. Most of the problems discussed in his book are pertinent to all close corporations, irrespective of size.

The author summarizes those characteristics of the corporate form which are disadvantageous in a closely held enterprise principally because the shareholders in the close corporation conduct their enterprise as though it were a partnership. He points out that the traditional corporate management pattern and the principle of majority rule for shareholder and director action are often objectionable to prospective minority shareholders who are concerned about the possibility of abuse by majority shareholders. They frequently insist upon a veto power, a limit upon the normal authority of the Board of Directors, arbitration of disputes, and a way of dissolving the enterprise different from that normally used in corporate dissolution proceedings. The author states: "A considerable part of this book is devoted to setting forth ways of gratifying these desires of shareholders in the close corporation to substitute partnership characteristics for corporate characteristics considered disadvantageous" (Sec. 1.12, p. 27).

His discussion of the problems of operation and of the problems of dissension, with the possibility of stalemate, deadlock and dissolution, are particularly illuminating. Lawyers representing close corporations frequently are confronted with the question of the fiduciary duty of directors and controlling shareholders to minority interests and to charges by minority interests of a "freeze out"—a manipulative use of corporate control or of inside information for the purpose of eliminating minority shareholders from the enterprise, reducing to relative insignificance their voting power or claims on corporate earnings or assets, or otherwise depriving them of corporate income or advantages to which they are entitled (Sec. 8.07, p. 105).

The problems arising from dissension in a close corporation are perhaps the most difficult for counsel to resolve. In this area the stitch in time can be vital to the enterprise and to the interests of the shareholders, and this book helps one to peer into the cloudy future by discussing measures that can be taken in advance to decrease disputes and suggesting solutions to solve those which have occurred. In anticipating future disputes, consideration should be given to the children or other successors of the individuals who are being counseled. Frequently the founders of an enterprise work together in reasonable harmony, since they had joined forces by choice, while those who follow in their footsteps might be less compromising in relationships which have been inherited rather than selected. Most of us have learned that once tempers have flared and positions have been taken by the participants, it is often no longer possible to recapture the attitude of reasonableness, and it is at such times that previously established procedures, like well oiled machinery, may save the enterprise from disruption.

If effective advance arrangements have not been made, and the disputing participants are evenly matched in so far as control is concerned, a frustrating deadlock can result. This often fatal hazard is not applicable to the publicly owned corporation, where the battle for control is either won or lost in the proxy

battle, and where the disapproving shareholder has open to him at all times a way out of the enterprise—he can sell his shares in a ready market.

The hazard caused by unreasonable dissension between equally controlling interests can to a large extent be lessened by the suggested use of shareholders' agreements and special charter and by-law clauses establishing buy-out arrangements or extraordinary dissolution procedures, and by the taking of precautions designed to make arbitration effective as a method of resolving controversies. Professor O'Neal wisely points out that the mere existence of arbitration procedures and the participants' knowledge that this quick method of settling controversies is readily available often induces successful negotiation of disputes that might otherwise reach an impasse, and he thus urges extending the use of the arbitration device to disputes concerning management and policy, as these are the areas which produce deadlock conflicts. He points out, however, the necessity for careful study of the statutes and decisions of the state of incorporation in order to determine whether arbitration can effectively be used; in some states the common law rule that an agreement to arbitrate future disputes can not be specifically enforced has not been modified. For example, the arbitration statute of the State of Illinois[1] does not refer to agreements to arbitrate future disputes and has thus been interpreted as not applicable to such agreements. Accordingly, until there is legislative or judicial relief in this state, arbitration has a very limited use in Illinois. Professor O'Neal states that the objections to arbitration of management disputes may be in part attributable to the fact that many lawyers "have permitted their thinking about arbitration to become channeled and are unable to envision for the arbitral process a new function completely unlike its traditional uses" (Sec. 9.11, p. 185). The law and lawyers are slow to change—but changes do take place. The increasing complexity of business decisions has resulted in accepting conferences with technical experts in special fields as a modus operandi in the business world. Since the same trend is occurring in the legal field, submission of a dispute to arbitrators who are technical experts may be expected to have increasing acceptability.

Legislative relief for the close corporation has followed on the heels of Professor O'Neal's valid criticism that the legislatures and courts have seldom recognized the distinctive problems of corporations whose shares are closely held. The Technical Amendments Act of 1958 permits corporations having no more than ten shareholders and meeting other qualifications to elect to by-pass the tax on corporate income by permitting the shareholders to be taxed directly —much as partners or sole proprietors are taxed.[2] The ranks of the close corporation should now be swelled by the incorporation of those sole proprietorships and partnerships which heretofore refrained from taking advantage of

[1] Ill. Rev. Stat. (1957) c. 10, Sec. 1.

[2] Int. Rev. Code §§1371–77, 26 U.S.C.A. §§1371–77 (Supp., 1958).

the corporate form because of its so-called double tax aspect: the corporate tax upon the corporate income, plus the tax paid by the shareholder upon receipt of income (after taking advantage of the slight reduction of tax on dividends granted to shareholders by the 1954 Revenue Code). Professor O'Neal's work should also encourage incorporation of many sole proprietorships or partnerships because of the ready availability of flexible arrangements suitable to their needs.

The eventful decisions handed down on February 24, 1959, and March 2, 1959, by the United States Supreme Court have, however, presented a deterrent to the choice of the corporate form because they impose an increased tax burden upon corporations. The *Portland Cement Company*[3] and *Stockham Valves and Fittings, Inc.*[4] cases held that a State might levy a State income tax upon a foreign corporation whose business in such state is exclusively in interstate commerce. These 6 to 3 decisions open the way for the 36 states which presently tax interstate corporate income, to the extent that it is apportioned to intrastate activities, to tax a share of the interstate corporation's profits. The decisions will also probably serve as an inducement to those states which presently do not have a state income tax[5] to enact corporate income tax laws to boost state income and retaliate against the tax liability imposed on their domestic corporations by other states. The dissenting Justices Whittaker, Frankfurter and Stewart argued that the Constitution prevents the states from regulating exclusively interstate commerce by taxation. Justice Frankfurter stated:

I think that interstate commerce will be not merely argumentatively but actively burdened for two reasons:

First. It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of forty-nine States, with their different times for filing returns, different tax structures, different modes for determining "net income," and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a far-flung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States.[6]

[3] Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959).

[4] Williams v. Stockham Valves and Fittings, Inc., 358 U.S. 450 (1959); E.T. & W.N.C. Transportation Co. v. Currie, 359 U.S. 28 (1959); Brown-Forman Distillers Corp. v. Collector of Revenue, 359 U.S. 28 (1959).

[5] Florida, Illinois, Indiana, Maine, Michigan, Nebraska, Nevada, New Hampshire, Ohio, South Dakota, Texas, Washington, West Virginia, Wyoming.

[6] Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959).

Two additional Supreme Court decisions involving State property taxes[7] will serve as an additional deterrent in the event the business involved is one that uses imports. The Supreme Court has now modified the doctrine of immunity from State taxation of imports remaining in unbroken packages by upholding property assessments both on ores, imported by Youngstown Sheet and Tube Company from five foreign countries which were separately stored and segregated as to country of origin, and on lumber and veneers imported by United States Plywood Corporation and stored for air-drying, the veneers being kept in bundles. The Court reasoned:

> Breaking the original package is only one of the ways by which packaged goods that have been imported for use in manufacturing may lose their distinctive character as imports. Another way is by putting them to the use for which they were imported.[8]

and concluded that the materials in question were put to the use for which they were imported when they were made ready for current operating needs.

The tax burden resulting from these decisions could be intolerable for many corporations, and the cost of record keeping to comply with the tax laws of several states could be prohibitive for small and medium size corporations.

Accordingly, these Supreme Court decisions will probably serve to deter the formation of the small and medium sized close corporations and perhaps cause many existing ones to terminate their corporate status. However, Professor O'Neal's setting forth in bold relief the law relating to the close corporation should be regarded as another eventful milestone in the growth of the law. It will serve as an invaluable aid to the practicing lawyer. It may serve to prod further judicial and legislative recognition of the distinctive differences between the close corporation and the publicly owned corporation, and perhaps also to promote relief from the burden of the recent adverse decisions.

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[7] Youngstown Sheet and Tube Co. v. Bowers, 358 U.S. 534 (1959); United States Plywood Corporation v. City of Algoma, 358 U.S. 534 (1959). These cases were consolidated for argument and decided on the same day.

[8] Youngstown Sheet and Tube Co. v. Bowers, 358 U.S. 534 (1959).

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