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Recent Legal Literature

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RECENT LEGAL LITERATURE

THE STATUTORY AND CASE LAW APPLICABLE TO PRIVATE COMPANIES, UNDER THE GENERAL CORPORATION ACT OF NEW JERSEY, WITH CORPORATION PRECEDENTS, by James B. Dill, Fourth Edition, 8vo. pp. xxxii., 580. New York: Baker, Voorhis & Co., 1902.

Unlike Judge Noyes's work reviewed below, showing how far corporate combinations can be, or ought to be, permitted, this shows how far they have gone in the state which has been not inaptly described as the home of the trusts. This is the fourth edition (the first appeared in 1898, the second in 1899, and the third in 1901,) of this most important work by the author of the law under which most of the great industrial combinations of the last five years have been formed. It is prepared by one that knows "how it is done," and is down to date in every particular. There seems to be no necessity for commendation, for the profession has evidently realized its value and seized it with avidity. This edition will be found much more valuable than the second, or third. This has 540 pages of text; the third 352, and the second 324. This contains 375 corporate precedents, the third, 242, and the second, only 190. The later legislation of New Jersey and the decisions of the courts of that state are inserted in their proper places, and brought down to date,—several cases not yet reported are given, and the very important one of *Berger* v. *U. S. Steel Corporation*, by the N. J. Court of Errors and Appeals, filed October 11, 1902, is reported in full on page 198. The text proper of the work consists of the constitutional and statutory provisions of the New Jersey law of 1896, with the amendments since, given in their regular order with full annotations from the New Jersey decisions, and those of other states where the statutory provisions are the same. This part of the work, in itself, forms a most valuable treatise on corporation law, as it exists in the state that has had the most liberal and consistently and competently worked out corporate policy extending over a series of years, of any state of the Union. This is the only state that seems yet to have consistently and adequately worked out a corporate policy, that compares at all with the care that has been given to the subject in England; the New Jersey policy, however, is much more liberal than the English; and whatever one may think of the policy, one must commend the manner in which it has been formulated, amended, and applied through the hands of experts, continually following a definite plan and policy, instead of being a mere hotch-potch of inconsistent, unconnected provisions, often without plan, and frequently with as little sense.

In many ways the most valuable part of this work will be found to be that devoted to Corporation Precedents, in which it is remarkably full, "giving actual demonstrations of the corporate problem as worked out by the most

eminent corporation counsel" in the cases of the greatest corporations now known in the world, including the original charter, the amended charter, the by-laws, the statute authorizing the conversion of preferred stock into bonds, and the certificate filed for this purpose, in the case of the United States Steel Corporation,—all given in full, as well as the decision of the Berger case sustaining this transaction; the complete charter of the Northern Securities Company and the charter of the very recently formed Shipping Trust (International Merchants' Marine Co.) are given, as are also the important provisions from the charters, by-laws, stock provisions, bond terms, statements of purposes, etc., etc., of many of the great corporations formed before and down to late in October of this year.

Forms of subscription agreements before organization, underwriters' agreements, certificates of incorporation, 180 object clauses, 39 general clauses, 34 capital clauses, 45 clauses regulating business, several forms of by-laws, minutes of organization meetings, stock certificates and transfers, placing shares in trust, voting trust agreements, minutes and notices of annual meetings, proxies, reports, amendments, conversion of stock into bonds, corporate bonds, and mortgage securing the same, agreements of consolidation and merger, dissolution, assignments of patents, etc., are given. One who carefully reads through these forms will learn more about how things are actually done, than by reading a half-a-dozen text-books on the subject. No more important work can be done by the student of corporation law than to study carefully these precedents.

The frequent use of heavy faced type enables one quickly to find the matter he seeks, and a general index, an index to precedents, an index to object clauses, an index to the charters of the companies given, and an index of the names of the companies from whose charters citations are made, furnish quick access to whatever one is after. All devices for making it a most valuable tool to work with are present. The paper, printing, and mechanical execution are excellent.

No one who pretends to keep up with the development of corporation law can afford to do without this work. H. L. WILGUS

A TREATISE ON THE LAW OF INTERCORPORATE RELATIONS, by Walter Chadwick Noyes, Judge of the Court of Common Pleas in Connecticut, 8 vo. pp. xlviii., 703, Little, Brown & Co., publishers, Boston, 1902.

This is a timely work upon a live topic, part of which is developing very rapidly. The subject is divided into five parts, in accordance with the author's classification of the processes out of which "intercorporate relations" grow, viz.: I. *Consolidation*,—"The union of stockholders, properties and franchises in a single corporation,"—170 pp. II. *Sale*,—"The absolute transfer of the franchises and property of one corporation to another,"—77 pp. III. *Lease*,—"The transfer for stated payments of the franchises and property of one corporation to another in perpetuity or for a term of years,"—133 pp. IV. *Corporate Stockholding or Control*,—"The acquisition by one corporation of shares of the capital stock of another,"—53 pp. V. *Combinations*,—"The coöperation of several corporations to accomplish a given purpose,"—203 pp.

The first four of these parts are generally treated in the standard works on corporations with reasonable fullness. This work however, seems to be fuller, upon all these topics, than most others, and sets forth clearly, logically, and quite satisfactorily the general principles involved, together with full abstracts of the statutes of all the states and England applicable thereto.

Part I, Consolidation, is developed under the sub-heads, nature of consolidation; legislative authority for consolidation, including its necessity, conferring, withdrawal, and construction of the same; constitutional and statutory restraints upon consolidation; assent of shareholders; method of consolidation; effect on consolidating companies and their stockholders; rights and powers of consolidated company, including transmission of property, franchises and privileges; obligations of consolidated corporation, including liens and remedies of creditors of constituent companies; irregular and invalid consolidations; and interstate consolidations.

Under part II, Corporate Sales, are discussed sales of corporate property, including that of private corporations, *quasi*-public corporations, exchange of property for stock of another corporation, and rights and remedies of creditors; sales of corporate franchises; and a special discussion of the sales of railroads, including the peculiar nature of such sale, the authority to sell, the execution and effect of the contract upon the rights and liabilities of both the vendor and vendee companies.

In part III, Corporate Leases, are considered leases of corporate property and franchises of both private and *quasi*-public corporations; leases of railroads, including nature, authority, assent of stockholders, execution, form and construction of the contract, covenants, rights and liabilities of lessor and lessee companies, leases under receiverships, *ultra vires* leases, leases to foreign corporations, and trackage contracts.

Under part IV, Corporate Stockholding and Control, are treated power to hold stock in other corporations including the necessity of statutory authority, express and incidental powers to do so; rights and obligations of corporation as a stockholder, both *intra vires* and *ultra vires* holdings; and control one corporation by another.

Part V, Combinations of Corporations, considers combinations as affected by principles of *corporation law*, including nature and formation of combinations, principles of corporation law affecting associations and trusts, and corporate combinations; combinations as affected by principles of *common law* and *public policy*, including the application of the law of *conspiracies*, of *monopolies*, and of *contracts in restraint of trade*, formulation of rules of public policy, the rules of public policy applicable, application of these rules to particular classes of combinations, rights and remedies; legislation affecting combinations, including the Federal statute, its contents, constitutionality, construction, application, and rights, remedies and procedure, and the state anti-trust laws, their contents, constitutionality, construction, application, and rights, remedies and procedure thereunder. The Federal statute is given in full, and extensive extracts from the state statutes, are given in the notes.

In part I, in addition to the discussion of the topics usually found under Consolidation there is found some new matter of much present interest concerning merger of competing lines of railroads, under plans like that of the

Northern Securities Co., in states having statutes or constitutional provisions forbidding the *consolidation* of competing lines. After showing the term "consolidation" in such statutes has a much broader meaning than elsewhere, and is meant "to place an effective bar against any union of railroad companies, whereby competition might be removed," and includes leases, traffic and pooling arrangements, sales, and purchases of stock controlling interests, the author says: "The following principles and propositions are established and a decision of the question would seem necessarily to involve their application:—(1) Prohibitions against the consolidation of competing railroads are declaratory of public policy. (2) Practical as well as technical consolidation contravenes such provisions. (3) Between the state and the corporation, acts of the stockholders may be regarded as acts of the corporation. (4) Unity of ownership is distinguishable from community of interest. (5) Assuming that an individual stockholder has the right to sell his stock, it does not necessarily follow that a majority may combine to sell their stock."—§ 36.

The development of part II, Corporate sales, is clarified by separate discussions of the sales of the *property* of private corporations; sales of the *property* of *quasi*-public corporations; sales of *franchises;* sales of *railroads*. The distinction between the *sale* of the corporate property, and the *exchange* of it for stock in another corporation is also emphasized by separate treatment, and shown to depend on the principle that "it is the right of every stockholder to demand that sales of corporate assets made preliminary to, and for the purpose of, liquidation shall be for money. He cannot be compelled to accept 'chips and whetstones' instead of cash." The exceptions, however, to this rule, whether by statute or otherwise, are noted.

In part III, Corporate leases,—along with the usually considered matters, the troublesome question of the liabilities of lessors and lessees of railroads receives lucid treatment under clear analysis.

In part IV, is found a description of the nature of a "Holding Corporation," saying it "is the modern device for uniting corporate interests. Consolidation requires the formal vote of a stipulated majority of stockholders, and the termination of the existence of one or more of the corporations. In case of a sale the vendor's interests in the corporate property are parted with absolutely. In case of a lease, the lessor has no other interest than the rental and remainder. Express legislative authority is moreover essential in case of consolidation, sale, or lease. The holding corporation, on the other hand, is a flexible agency. Its power depends upon its charter. The only prerequisite to the practical union of two or more corporations through a holding corporation, is the ownership of a bare majority of the capital stock of each company. The only formality is the transfer of the shares to the holding corporation." It is said such holding corporations have taken the place of "trusts" in industrial combinations, and have been employed to effect a practical consolidation of railroad companies. Their validity depends upon public policy, comity, and the federal and state anti-trust acts. Their advantages are to furnish a ready and effective method of controlling several corporations for a common object; to perpetuate corporate control, so that death or disagreement among financiers will not affect the control, making therefore a better instrument than the voting trust. It also permits the capitalization of stock con-

trolling interests, so that "through the formation of a series of holding corporations, it is conceivable that the majority stockholders of a holding corporation of a thousand dollars capital, might hold the ultimate control of a corporation of a million dollars capital."

Part V, Corporate Combinations, is the most interesting, and under the present state of the law, the most important part of the work, and it furnishes the greatest opportunity for the author to show his capacity. The topic here treated has received, so far, very inadequate consideration in the standard works on corporation law. Mr. Beach, in 1891, gave 56 out of 1416 pages, to this subject; Judge Thompson, in 1894, 24 pages out of 6498; Mr. Cook, in his 4th edition of 1898, gives 23 out of 2660 pages; Judge Elliott, in 1899, 7 out of 677 pages; Mr. Taylor, 5th edition, 1902, 9 pages out of 821; while Clark & Marshall, 1902, treat the subject only incidentally in their 2758 pages. There have been the special works of *Hirschl*, Combination, Consolidation and Succession of Corporations (1896); Cooke, Trade and Labor Combinations (1898); *Beach*, Monopolies and Industrial Trusts (1898); and *Eddy*, Monopolies, Trusts and Combinations (1901). Mr. Hirschl's work is a useful collection and abstract of cases arranged in the crudest way, with little effort and less success in the discussion of principles. Mr. Cooke conceives that the test of the legality of any act, whether of combinations or of others, is, "whether it is the natural incident or outgrowth of some existing lawful relation."—the combination alone being unimportant. He, however, regards the matter largely as one of restriction of competition, saying, "any restriction upon competition is illegal, if resulting, or tending to result, in the control of a substantial portion of the commodity in question." Unreasonable, permanent restriction of competition in articles of necessity is illegal. Mr. Eddy's fundamental thesis is, "the test of the legality of any particular combination of capital is, whether or not it is a criminal or a civil conspiracy." If neither, it is legal. "Combination is the generic term of which conspiracy is the illegal species." He extends the definition of conspiracy, however, so as to include the doing of something *oppressive*, or doing something lawful by *oppressive* means, or both. The question whether the object and purpose of a combination are oppressive, is one of *fact*, and it is necessary to show what the purpose is, and exactly whom it oppresses. On the other hand, Judge Noyes says his underlying theory is the opposite of Mr. Eddy's. This is certainly sufficient justification (if there were no other, though there is) for the preparation and publication of the work,—for on these topics all the light possible is needed. "The theory of this treatise is that the validity of a combination depends upon considerations of public policy." To go more into detail, the author defines "corporate combination" as "a combination of corporations formed by the transfer of the controlling stock interests, or the properties and good will of several corporations, engaged in the same branch or connected branches of business, to a single corporation, formed for the purpose, which by virtue of the transfer, acquires a proprietary interest in such stock or properties." The validity of such will be ascertained by the application of the following "negative principles": (1) "A combination of corporations is illegal which contravenes the principles of law governing corporations,"—the important points being the manner of organization, and the powers of the combining companies. (2) "A combination is

illegal which contravenes rules of public policy,"—which involves a consideration of (a) the purposes of the combination as a fact; (b) the rules of public policy as a matter of law, and (c) the application of the rules to the facts. And (3) "A combination is illegal which contravenes any statutory provision,"—the application in any particular case depending upon the form and object of the combination, and the constitutionality and construction of the statute. Under the first of these are clearly set forth the principles of illegality as involving partnerships between corporations, delegation of corporate powers, and sales, leases, or consolidations, without authority. Under the second, the laws of *conspiracies*, of *monopolies*, and of *contracts* in *restraint of trade*, are reviewed, with the general result that they are all inapplicable and misleading, and that the fundamental test in every case is, "Is it against public policy?"—and nothing is gained by calling such combination a conspiracy, a monopoly, or as resulting from a contract in restraint of trade. The author then considers, and quotes extensively from the cases of the Sugar Trust, the Standard Oil Trust, the Whiskey Trust, the Preserver's Trust, the Chicago Gas Trust, the Match Trust, the Glucose Combination, the Biscuit Combination, the National Lead Trust, and the National Harrow Co., in order to deduce the underlying rules of public policy, which he states as follows:

"(1) Any combination of corporations or individuals, the object of which is, or the necessary or natural consequence of the operation of which will be, the control of the market for a useful commodity, is against public policy and unlawful."

"(2) Any combination of *quasi*-public corporations, the object of which is, or the necessary or natural consequences of which will be, the increase of charges beyond reasonable rates, or the curtailment of facilities afforded the public, is against public policy and unlawful."

In explanation of the first rule it is said the test lies in the object and not in its form, and a purchasing and holding corporation is no less vulnerable than other forms. As to objects and tendencies, "The question is not what has been done under the combination, but what might have been done. The inquiry is whether a natural result of the operation of the combination would be prejudicial to the public interests." Control of the market "means the control of the disposition of a given product in a given market," involving suppression of competition by control of product or regulation of prices. Practical or substantial control of any market,—even that of a single village,—is sufficient and no limit of territory need be prescribed. Useful commodities are to be distinguished from those "articles of commerce, which are, in no proper sense necessaries or even conveniences, but mere luxuries or appendages of vanity," all of which vary with different ages and conditions of society. These results are quite in accord with Mr. Cooke's, though reached in different ways.

The work will be found useful especially for bringing together, arranging, developing and applying in an orderly way, the underlying principles, to these groups of allied topics, under the title of "Intercorporate Relations," which seems very appropriate. It is a temperate and modest discussion, that keeps close to the cases. The author seems to know what he wants to say, and says it clearly and concisely. This is always to be commended, but in a work

"blazing the way" into new fields (or brambles) as this does in several places one must express the wish that the author had given a fuller discussion of the controlling principles, and attempted to answer questions that constantly arise in one's mind. The author's discussions are not nearly so full nor vigorous as those of Mr. Eddy, and will suffer in comparison. The work, however, is much smaller, and although not touching upon labor combinations, it covers a much larger field than Mr. Eddy's work.

There is no expression as to the necessity or desirability of any national constitutional amendment, and no distrust of the present national legislation is suggested. As to the state anti-trust acts it is said "many statutes are unconstitutional and many wholly inadequate. Effective legislation can be the result only of radical changes. . . It is idle, however, to say that the state cannot provide some relief from the evils of the corporate combination when relief is demanded." The author, throughout the work, scarcely ventures further than this in expressions concerning desirable or possible policies.

The mechanical execution of the work is excellent. Citations, both of statutes and decisions, upon all leading points are arranged alphabetically by states and parallel references to the various reports of the same case, with dates, are given. A full analytical table of contents, a good index, and numerous cross references in the notes furnish easy access to everything in the work. Everything indicates a faithful, careful, conscientious, and successful execution of the task the author set before himself—and it was one well worth doing in the way it is done.

H. L. WILGUS

THE GENERAL PRINCIPLES OF THE AMERICAN LAW OF THE SALE OF GOODS.—In the form of Rules with Comments and Illustrations; Containing also the English "Sale of Goods Act." Second edition. By Reuben M. Benjamin, author of "Principles of Contract," Professor in the Bloomington Law School. Indianapolis and Kansas City: The Bowen-Merrill Co., 1901. Pp. x. 401.

This little book is made up chiefly of about sixty "Rules" wherein the general principles of the law of sale of goods are stated, followed by some comment upon these rules with lists of cases wherein they are stated or applied. This portion of the book takes up 257 pages. It is followed by a chapter (new in this edition) in the same style treating of the sale of goods under the statute of frauds. To this is appended the English "Sale of Goods Act 1893." The rules are printed in capitals; the comment in ordinary type. In framing the rules, the English Act was taken "as the basis of this work, by following the clauses of the Act with such modifications as might seem necessary to make them correct and logical inductions from the American cases."

Mr. Benjamin has been very successful in stating, so far as they can be stated in the form of rigid rules, the general principles of the law of sale, and when the time comes for the state to attempt to reduce the substantive law to the form of a code Mr. Benjamin's work will go far toward supplying the material in this department. The citation of cases is quite exhaustive and gives evidence of much care and patient research. The book cannot fail to be useful to the practitioner as a convenient hand-book both for its statement of principles and for its lists of well selected cases. Such a book, however, in the judgment of the present writer, is not very well adapted to class room

use. The very conciseness which might make it useful and attractive to the lawyer who understands how difficult it is to state the law in the form of rigid rules, often proves repellent and misleading to the student.

FLOYD R. MECHEM

ABBOTT'S BRIEF FOR THE TRIAL OF CRIMINAL CAUSES. Second Edition. Lawyer's Co-operative Publishing Co., Rochester, N. Y. 1902. Pp. xx, 815, 8vo.

The first edition of this work was published in 1889, with Austin Abbott as its author, assisted by William C. Beecher. This new edition is a substantial improvement over the first, which in its day was an excellent handbook, and well received by the profession.

An examination of this second edition has led us to conclude that it is certainly one of the most helpful books for the trial lawyer to be found among the already numerous practice books available to him. This edition has been prepared by the editorial staff of its publishers and brings the book down to date, adding new cases and many new propositions, particularly such as have been made prominent through the discussion of courts in the years since the publication of the first edition. This new matter has enlarged the book till it now contains substantially twice as much as the former edition.

The plan of the book is to take up the questions in the order in which they would occur in the ordinary progress of the trial, beginning with questions growing out of the constitutional right of the accused to counsel, and taking up in natural order, questions pertaining to the finding of the indictment, the arraignment, the demurrer or plea, bills of particulars, continuances, separate trials, selection of trial jury, supervision of jury, the opening statement, compelling election by the prosecutor, presence and competency of witness, order of proof, rules of evidence applicable to various classes of evidence and to the examination of witnesses in its production, the taking of the case from the jury, the argument of counsel, the instruction of the jury, the verdict and the judgment. This outline gives no adequate idea of the fund of practical legal knowledge, here to be found for the trial lawyer. Many matters of great practical value found here are not brought to mind with the above outline; such as the presence of the accused, manacling, motions to quash, change of venue, experiments before the jury, inspection of the accused, decoys, detectives and spies, use of documents by the jury, and the like.

While the citations are not exhaustive, they seem fairly illustrative, and reasonably accurate. It is too much to expect that it would completely satisfy every person having occasion to use it. No author can possibly foresee the various points of view from which his readers will come to consider the merits of his book. Some will feel disappointed in not finding here some particular matter he thinks within the scope of the book. We confess to a little disappointment in not finding, in view of the now wide prevalence of that method of procedure, treatment of that class of questions which grow out of, and are peculiar to, the prosecution upon complaint and information as distinguished from presentation upon indictment. But on the whole the book compels the statement that in its own peculiar field, there is nothing more practically helpful for the criminal lawyer.

VICTOR H. LANE

THE LAWYERS REPORTS ANNOTATED—All Current Cases of General Value and Importance, with full Annotation. Burdett A. Rich and Henry P. Farnham, Editors. Book LV., Rochester, N. Y.: The Lawyers' Co-operative Publishing Company, 1902. Pp. 1026.

The LAWYERS REPORTS ANNOTATED, or, as they are commonly cited and described, the L. R. A., are a series of selected cases, established in 1888, and issued at the rate of four volumes a year. The pages are large with double columns and small type. The cases are selected from the decisions of the courts of last resort in the several states and from the United States circuit courts and the circuit courts of appeals. Each volume is issued in bi-weekly parts, which may be exchanged for the bound volume when it is ready. The cases appear very promptly after their decision, often long in advance of the official report. The cases are most admirably reported. The statements of fact are full and complete, and the briefs of counsel are carefully abstracted and reproduced—a feature peculiar to this series and one which indicates that the editors must often put themselves into communication with the counsel in the case in order to obtain such full information. Every case is annotated,—sometimes only to the extent of referring to the previous cases in this series, while to other cases notes are appended which surpass in fullness any with which we are acquainted elsewhere. At the end of each volume is an interesting "Resume of the decisions published in this book." The cases included in this volume would make at least two such volumes as the last number of the United States supreme court reports, while the notes if published in regular law book form would make a text-book of about eight hundred pages. The books are well printed and bound. The only objection which can be urged to the mechanical execution is the smallness of type, but as to this, we believe that the users some time since when the matter was submitted to them for decision, declared that they preferred the present type to any other which would reduce the amount of matter in each book.

So much about the general nature of these books. The most important matter, of course, is the question of the selection of the cases. With respect of this, no two men would precisely agree. The cases that suit one man's need may, owing to a difference in location or the line of work pursued, prove not so well fitted to another's needs. How widely different may be the principle of selection adopted is shown by the fact that while the AMERICAN STATE REPORTS and the LAWYERS REPORTS ANNOTATED were begun in the same year and have since been covering substantially the same ground, the number of cases found in both series is comparatively small. A colleague when recently asked which of the two series gave him the more help in his work, replied, "The American State Reports." In response to the same question another member of the Faculty replied, "The Lawyers Reports Annotated." More cases upon new and unusual points are believed to appear in the latter than in the former; there are certainly more cases wherein there were dissenting opinions. The cases in the latter series are also better reported, if the fuller statements of the facts and the reproduction of the briefs of counsel are to be deemed of value. Without, however, attempting further comparisons, it is safe to say that everyone who has had an opportunity to use the L. R. A., will agree that they do "give help in hard places," and that the man who buys them gets full value for his money.

FLOYD R. MECHEM