

BOOK REVIEWS

PROFITS, DIVIDENDS AND THE LAW: PROFITS AVAILABLE FOR DIVIDENDS FROM STANDPOINT OF LAW AND BEST ACCOUNTING PRACTICE. By Prosper Reiter, Jr., J. D. Introduction by Henry Rand Hatfield, University of California. The Ronald Press Company, New York, 1926, pp. xii, 260.

The law as to corporations is likely to develop rapidly in directions as to which there are at present only hazy guideposts of statute and precedent. The increasing recognition of the difference between share ownership for investment and such ownership for management, the extension of share ownership to new classes of persons, the creation of non-par, or non-voting shares, or of other new forms practically obliterating the distinction, previously so clear, between shareholder and creditor, and the separation of voting power from financial interest, tend to create new problems and to shift the centre of importance in corporate law from inquiries as to the nature of a corporation and the extent of its powers, to inquiries as to its financial structure; for the new problems are all alike in this respect: they bear upon the legal relation of those having a financial interest in the corporation to its various assets. The lawyer when first confronted with them is often surprised and somewhat annoyed to find that he has been preceded in the field by the accountant who has more or less independently developed attitudes and solutions of his own. Terms currently used by the lawyer and fairly satisfactory in the past, despite their vagueness, have been given new and more precise significance. The learning of the accountant, though often curiously procrustean and arbitrary—at least to the practical lawyer,—has contributed much in accuracy and analysis. Of this learning the lawyer must and does avail himself.

Mr. Reiter, as is stated in the gracious and happy introduction of Mr. Hatfield, Professor of Accounting at the University of California, has had training not only in law but in accounting as well, and his book evinces as much. He is well qualified for liaison service between these two bodies of learning which are after all concerned with the same end. Though the scope of his subject as indicated in the subtitle is narrower than that of the problems above described, his subject does require an analysis and a presentation of the elements of the corporate financial structure and of the terms used to describe those elements from the points of view of lawyer and of accountant, and also a reconciliation of those points of view where divergent; and an understanding of these elements and terms is fundamental in connection with these new problems which face us all. The principal value of Mr. Reiter's book lies here, and is greater than he undertakes to make it. His examination of these elements in the light of accounting practice and of case and statute law is acute and lawyerlike, and his touch upon terms commonly used by lawyers with vague and varying meanings, such as capital, capital stock, surplus, etc., is always so clarifying and precise that anyone who has read his book will thereafter hesitate to use those terms unless he is certain that his hearer understands exactly what he means. In the course of this examination Mr. Reiter makes a valuable analysis of certain often miscited leading cases, such as *Lee v. Neuchatel Asphalt Co.* [1889] 41 Ch. D. 1, and *Goodnow v. American Writing Paper Co.*, 13 N. J. Eq. 692,

(1898) and establishes very clearly their actual holdings and precise worth as precedents.

It is unfair to criticise a book for not doing what it does not purport to do. Mr. Reiter's purpose is indicated in his subtitle, and having determined what funds are available for dividends, he is justified in going no further. It is to be regretted, however, that he did not turn his accurate hand to the division of such dividends among shareholders of various classes. Furthermore, the arrangement of his material is somewhat confusing. The book is divided into two parts: I, British Law, II, American Law and Practice; but the first part of Part I is concerned with preliminary matters which apply equally to both parts; the chapters actually relating to British, or rather English, law proceed upon quite a different arrangement from that covering similar topics in this country; and the first chapter of Part II, "Liability of Shareholders and Directors,"—a chapter broader than the scope of the book as a whole, in that it analyzes the "trust fund" theory and discusses the rights of creditors—omits consideration of English cases which are, to say the least, interesting in comparison to our own. On the other hand a discussion of the "trust fund" theory from an accounting point of view is by itself of value to lawyers.

These, however, are minor faults, in face of the value of what Mr. Reiter, who in a sense is a pioneer, has given us. Mr. Hatfield says: "This treatise by Mr. Reiter is one which must not only prove indispensable to accountants, but should appeal to every business man concerned in corporate finance and to the host of lawyers whose efforts are concerned in determining the amount of profits which a corporation has made during a given year." Though this statement is strong and though I cannot speak for the accountant or business man (Mr. Hatfield is, however, entitled to speak at least for the former), in my opinion so far as the lawyer and law student are concerned the worth of the book is stated too narrowly.

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PENNSYLVANIA CORPORATIONS (Second Edition). A Treatise upon the Incorporation and Regulation of Corporations, the Powers and Duties thereof, and of Corporate Officers. By Frank R. Savidge, New York. Clark Boardman Co., Ltd., 1926, 2 volumes, pp. clxxxii, 1452.

With the developments of the last few years in the field of the law of Business Associations, the author of a work on Corporations is hard put to it to determine what line of attack he shall follow. Shall it be an effort to bring into the law of Corporations a consistent theme, to hew to the line of principle, letting the dubious cases fall away with illuminating comment upon their shortcomings? Such is the method best illustrated by Professor Wigmore's work on Evidence,—the method on which the American Law Institute's draftsmen are generally embarked in their different fields.

But in the new Second Edition of the treatise on Pennsylvania Corporations by Frank R. Savidge, Esq., of the Philadelphia Bar, we find the other plan of action adopted. Herein is a statement of the law as it is, in the light of the statutes and the decided cases. Mr. Savidge's first edition, published in 1905,

has become one of the standard works of Pennsylvania law. The developments of corporation law, as for instance in problems of capital structure, taxation, foreign corporations, have made a new edition an essential, and in his present work Mr. Savidge has presented in two compact volumes the law of today in a workable shape which must appeal to a practicing lawyer. The books are ably indexed, each volume carrying the complete index for the convenience of the user. The statutes and forms relating to a given subject are collected in the body of the text relating to the same subject, so that one portion of the book furnishes all the material for which the reader is seeking, without the troublesome necessity of thumbing back and forth through two or three different parts of the work.

If there is any regret in the mind of the reviewer concerning this treatise, it is that Mr. Savidge has limited his field to the point so far reached by the authorities. For well over a score of years, every Pennsylvania decision and statute affecting corporation law must have been submitted to an analysis by him as it appeared. In the course of that time definite conclusions must have been reached as to the trend of the law, a definite background established which would enable the author to fill in the gaps left in the law of corporations by the cases and the statutes. What, for instance, is the law of Pennsylvania today as to the "stated capital" for non-par value stock if there be also issued par value stock of a different class? In such case, need the whole authorized capital of the par value shares be paid in full, as well as the excess representing the non-par stock, before the corporation commences business? The Act of July 12, 1919, P. L. 914, indicates that is true if the par value shares are actually "outstanding," but does not specifically cover the situation if those shares are authorized but unissued, or are issued contemporaneously. Sections 631 and 632 of Mr. Savidge's book simply quote the statutes with a restatement of them, which indeed is the manner of treatment of the entire chapter dealing with Stock Without Par Value. And would not an editorial statement of what *cannot* be accomplished under the Pennsylvania law in the way of corporate financing, as well as a summary of what can be done, be of value to the profession? A statement of the desirability or undesirability of enlarging the law along the same lines might prove of influence in shaping the course of legislative or judicial action. Very few legislators or judges can go so far into an analysis of a subject as does the lawyer who writes a book upon it.

These comments are, however, upon scope merely, not upon the workmanship of what has been done. The book as it stands fills the place laid down for it, as a valuable reference book for the Pennsylvania practitioner.

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