Book Review (reviewing Gilbert T. Stephenson, Trust Business in Common Law Countries (1940))

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It is indeed fortunate for the public that the major portion of the business is done by relatively few justices, who have prepared themselves to render efficient service. The J. P. system has been justly the subject of severe criticism in recent years, and it is suggested here that this is traceable, for the most part, to the incapacity of the 730 justices who transact some business, but not enough to educate them in the duties of their office, or who are morally or mentally incompetent. North Carolina, alone of all the states, permits almost anyone to become a Justice of the Peace if he so desires. Three are elected from each township, regardless of population, and an additional one for every 1000 of population in each township containing a city or town. The Legislature appoints as many more as may find the favor of a senator or representative, and the Governor has unlimited power of appointment. The Bar Association and the Association of Magistrates have collaborated on a bill, again to be submitted to the General Assembly in 1941, which is aimed at a limitation on the number of magistrates, and a reduction in the methods of selection to one: election. Enactment of this bill would undoubtedly result in a great improvement in the personnel of the Justices of the Peace in North Carolina. If this should happen, and those elected should take advantage of such aid as is offered by the admirable little book under review, the court of the Justice of the Peace in this state might be restored to its ancient dignity and honor.

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Gilbert Stephenson possesses unique qualities and qualifications. He is a lawyer and trust officer of many years service. He has had long experience as director of trust research for the American Bankers' Association. For years by travel and correspondence he has been collecting data about trust problems and trust practice all over the world. He has expounded his knowledge and developed his views in numerous articles, addresses and books.

In Living Trusts and in Wills he has discussed in detail the purposes, methods of creation, and problems of carrying out inter vivos and testamentary trusts in the United States. In Studies in Trust Business he has treated many important aspects of professional fiduciary work in this country. And in English Executor and Trustee Business he has given the professional and business world much valuable information about trusteeships as they are administered in England.
The new work under review is to have a companion: namely, *Trust Business in Civil Law Countries*. The present work covers fiduciary administration in the British Empire and the United States. It is not limited to the execution of strict trusts, but touches also on executorships, guardianships, administratorships, and agencies. Thus, "trust business" is used in the sense of "fiduciary administration", but not all fiduciary administration is discussed. It is only the work of professional corporate and public fiduciaries that is of concern to the author. He leaves to one side the problems and practices of the professional individual trustee and of the casual trustee, corporate or individual.

Mr. Stephenson's method is exceedingly businesslike, orderly and easy of comprehension. He groups common law countries into ten subdivisions, namely, (1) England and Wales; (2) Scotland; (3) Ireland; (4) Canada; (5) New Zealand; (6) Australia; (7) Union of South Africa; (8) British India, Burma, and Ceylon; (9) Other Countries of the British Commonwealth; and (10) the United States.

He then discusses trust business in each of these ten groups under sixteen headings, namely, (1) Historical Background; (2) Trust Institutions; (3) Trust Functions; (4) Trust Policies; (5) Trust Compensation; (6) Trust Legislation; (7) Trust Statistics; (8) Trust Earnings; (9) Trust Supervision; (10) Trust Promotion; (11) Trust Education; (12) Trust Literature; (13) Trust Associations; (14) Trust Branches; (15) Distinctive Features; (16) Conclusions.

The material presented is partly statutory law, but the larger portion consists of a discussion of trust instrument terms and of the policies and practices of the trustees involved. There is no attempt to write a book on the substantive law of Trusts in any one of these countries, or to elaborate adjective law and the procedures of trust enforcement. The statute law mentioned is all concerned intimately with the establishment of professional trustees and with their powers and functions. The material about professional trustee custom and practice is that which would be discovered from a reading of trust instruments, examination of account books, perusal of advertising circulars, conversations with or letters from officials, and reading of the addresses and papers presented at group meetings.

The literature of ordinary trust law is adequate. There are the Restatement and numerous texts. In these one may find discussion of the decisions and statutes which lay down the principles and rules about the establishment and government of the various types of trusts. But an important section of trust law is not found in the reports of the appellate courts or in the codes and session laws. It is that part which trust parties make for themselves. It consists of the terms which are
written into trust instruments at the behest of settlor or trustee, limiting or expanding the rights and duties which equity would otherwise establish. This part of trust law is scattered and unavailable to the ordinary searcher. It takes the patience, skill, and energy of a Gilbert Stephenson to discover these materials and consolidate them; and even he could not do it, if he did not have the backing of the Bankers' Association and the entree thus given to the confidential files of the professional trustees.

Mr. Stephenson's style is extremely clear; direct, and terse. He wastes no words. He leaves no doubts.


This work will be very useful to trust men and bankers, lawyers, and students of the topic. They can obtain here in concentrated form a digest of professional fiduciary experience all over the English-speaking world. They can readily contrast governmental and institutional practice with regard to fiduciary management. They can observe the status of corporate and governmental trust administration at its present stage of development.

"Trust business" is a well worn phrase. Mr. Stephenson did not invent it. It grates just a bit. Undoubtedly the conduct of relations between a trustee and third persons can without impropriety be called a "business." But can the same term be appropriately applied to transactions between beneficiaries and trustee? Would not the equitable doctrines of loyalty, candor, and unselfishness make "profession" a more apt word for this portion of the work of the trustee? And does not the fact that "trust business" is used without hesitation to describe all the trustee's functions tend to indicate that subconsciously the professional trustee thinks of itself as bound to have merely "the morals of the market place"? The courts, the legislatures, and especially the framers of trust instruments are little by little and year by year subjecting the strict ancient doctrines to the processes of "erosion."

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