

(born 1564, died 1641, a few years before tenure by Knight's service was abolished); Spelman who, as Maitland never tires of saying, was really the man who introduced the feudal system into England.

The ground of the forfeiture by Philip Augustus of John's holdings in France is said to be John's murder of his nephew Arthur.<sup>10</sup> Apparently the decree of forfeiture of all but Normandy was entered some time before Arthur's death, the reason assigned being John's dishonor of his vassal, Hugh of Lusignan, by taking the latter's betrothed and marrying her.

King's Bench and Common Bench had agreed, before the middle of the 1500's at the latest, that if the debtor made an express promise to the creditor to pay a pre-existing debt, the creditor could bring *assumpsit*. This principle is recognized in Brooke's Grand Abridgment, *accion sur le Case*, 105; Brooke's New Cases, 4, *Action upon the case*, citing 33 Hen. VIII (1541-1542), where, however, the creditor lost because the debtor had waged his law successfully before he promised to pay the debt. This involved the real question of consideration. Was a debt sufficient consideration for a subsequent promise to pay it? Without much dispute between the two courts, it was agreed that it was consideration. If the debtor did not make an express promise to pay the debt, could the creditor, at his election, bring *assumpsit* instead of debt? This was not settled so easily. The King's Bench said, "Yes"; and the Common Bench said "No" for many years. As far as *Slade's Case* is important, it is because the Common Bench finally yielded on this point to the King's Bench, thus extending the jurisdiction of the latter court. That a debt was consideration for a subsequent promise to pay it had been settled long before. The discussion of this subject<sup>11</sup> gives no hint of the long contest on this point between the King's Bench and the Common Bench; and unless we keep this contest in mind, the cases seem to be hopelessly at variance.

But all these are, for the most part, matters of opinion, of stress, of emphasis. We have here another admirable book on Anglo-American law for the beginner; a handbook in the preparation of which the author avowedly leans heavily,<sup>12</sup> as every writer on this subject must lean, on Pollock, Maitland and Holdsworth; a book which is a valuable addition to our tools for teaching the history of our law; a book which will arouse interest, stimulate thought, and make the dead past live again.

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**Handbook of the Law of Private Corporations.** By Robert S. Stevens. St. Paul: West Publishing Company, 1936. Pp. xvi, 860. \$5.00.

In a field wherein there are numerous massive, not to say monstrous works covering every nook and cranny, besides numerous specialized books covering nearly every nook and cranny over again separately, and one good brief work suitable for students, there might have seemed little purpose except publishers' needs for a new book of the last named class. Particularly, is that true where, as in corporation law, the most striking developments over a decade have been from statutory changes, a thing to which Hornbooks and their like usually give scant attention and where, as here, no radical innovation in arrangement or theory is attempted.

<sup>10</sup> P. 135.

<sup>11</sup> Pp. 456-57.

<sup>12</sup> Preface, p. v.

But the book is here and it must be appraised on the basis of its utility and what it purports to do. On the matter of statutes, just spoken of as largely absent in Hornbooks, this work is exceptional in consistently informing the reader of legislative modifications and extensions of the case law. I can say nothing but good of that service even in those instances where I do not entirely agree that the statutes have struck "an enlightened balance between freedom and control of corporate management," to quote the preface. On the matter of its general character the text is offered as a legal discussion not overburdened with economics and sociology but written with an awareness of the realities behind the law.

Mr. Stevens' realism is not spectacular. Indeed, in the matter of the corporate entity—or non-entity—which is his central theme, it seems to me that he rather labors the point. But perhaps we should thank him for lack of the spectacular as a gladsome relief from those who will be realistic in a worthwhile manner if they can, but who will be, at all events, spectacular in the parade of supposed new thought, like children in the garden who shriek forever hysterically that they have found a new bug the like of which has never been seen before. Such incessant din is trying to the nervous,—and there are many such in the legal profession,—and, of course, useless to the deaf, of whom there are many more. There is no such din in Stevens but rather, a sober, lucid presentation of fairly orthodox doctrines and, it seems to me, intelligent criticism where there is fault and intelligent choice where there is conflict.

Comparison with Ballantine is the almost inevitable mechanics of thought about Stevens. The two books, of about the same size, cover largely the same ground in largely the same order with some not startling differences in emphasis. Stevens, for example, gives no topical treatment to Consolidation or to Amendment and Legislative Control but distributes the cases with somewhat more meager discussion in other sections where problems concerning these subjects arise incidentally, as in Creditors' Rights, Capital Stock and Dissolution. On the other hand, of course, he includes in statutory reorganization some comment on section 77B of the Bankruptcy Act—though hardly as much as the section seems to demand considering its wholesale utilization to crowd the federal courts and their advance sheets. Stevens cites fewer cases than Ballantine, especially fewer English cases, elaborates in the text upon fewer of those he does cite but gives proportionately more, very short, key summaries in the footnotes. I think he gains slightly both in space and clarity by this course though he does not thus give the easy summaries and criticism of leading cases which, now and then, serve as classroom "preparation" for hard pressed students. His failure to cite all the cases reported in the contemporaneous revision of the same publisher's casebook on Corporations<sup>1</sup> may go to the matter of occasional convenience of student reference but it seems not to have affected the substance. The one exception which a sampling discloses is in reference to director's liability for neglect in office. Inclusion of *Barnes v. Andrews*<sup>2</sup> might have cast a slightly different light on the extent of that liability. It may be, furthermore, that the whole subject would gain by short-cutting the vague and conflicting judicial generalities on proper standards of care—which most often boil down to "reasonable care under the circumstances"—and substituting a pro-

<sup>1</sup> Richards, *Cases on Private Corporations* (3d ed. 1936).

<sup>2</sup> 298 Fed. 614 (D.C. N.Y. 1924); Richards, *Cases on Private Corporations* 331 (3d ed. 1936).

cedural approach—what instructions specifically should be given a jury in these cases? It would be of real practical value, moreover, to consider exactly what a director should do when the board on which he sits conducts the business badly in the face of his dissent.

Here and there Stevens seems to me to be definitely more satisfactory than Ballantine, due in part to his coming later to the task. On the power or authority to acquire shares of other corporations the two books, despite some seeming conflict as to the general state of the law, come around to pretty much the same view when the details and exceptions are all in but Stevens then takes up the ills which have come from holding companies' utilizing the opportunities of stock ownership and notes the problems of regulation which must be met by statute. He might well have added references to strenuous federal attempts in the Railroad and Utility Acts to grip this situation on a national scale.

The thing which most differentiates this text from others both large and small is the definite adoption and consistent application of the non-personal-character view of a corporation which is, of course, not a new doctrine with this book.<sup>3</sup> The membership may be a group, a herd, a litter or a corporation but they are, or it is, not a separate personality. At most they are dealt with as if they were and this applies whether the question is what usually travels as "disregarding the corporate entity" or a problem of *ultra vires*. And of course the arguments about franchises "to be" in distinction from those "to do" pass into vapor with this analysis. It may be that no such infrequently accepted doctrine is necessary to prevent corporations from being a menace, for some who have been at the opposite pole as to the metaphysical analysis have contended for quite similar results.<sup>4</sup> But it would undoubtedly be easier to persuade courts to arrive at those results in some difficult cases if corporate bogey men were no longer thought to exist. Obviously the group theory is no cure-all, for there will remain the policy question, among others, of when to give the group the benefit of their "as if" status, and Mr. Stevens makes no such fallacious contention. As he recognizes, it simply lets the courts come to the policy question without previous technical interruptions.

As to using the non-personality analysis to support the further breakdown of the strict doctrines of *ultra vires*, I am inclined to think that more can be accomplished at this date by statute, a work in which Mr. Stevens has himself prominently participated. His appended table of such statutes is most significant.

Structurally the book is excellent,—I have noted but one typographical error. The table of cases is in the rear. Perhaps that is better but, on a parity of reasoning, perhaps the Dodge gear shift was better than that which became standard in automobiles. I wish it were in front.

Viewed as a whole the text is superlatively simple without being superficial; it is singularly free from seasoned but useless platitudes; it departs in few respects from the general outline and viewpoint of other texts but it represents real judgments and not headnote stringing.

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<sup>3</sup> Hohfeld, *Fundamental Legal Conceptions* 194, 198 (1923).

<sup>4</sup> See Bryant Smith, *Legal Personality*, 37 *Yale L.J.* 283 (1928).