

importance of code merger of law and equity lies partly on the fact that reforms in our legal system arising in equity out of the application of equitable principles in an ever-widening stream no longer have to be 'adopted' at law as did the reforms initiated and established in equity prior to code merger." Some of the more important lines of progress which have had their origin in equity have been the development of equitable relief in tort cases, the development of specific performance, the increasing readiness to relieve against fraud and mistake, and statutes permitting declaratory judgments. The reviewer is prompted to ask whether the right of action of the third party beneficiary under a contract is so universally established in American jurisdictions that there is no longer room in this field for the liberalizing influence of equitable doctrines? In England this question would call for an answer in the negative.

Turning over once again the pages of this fine book, it occurs to the reviewer to applaud the many pages of notes and references, by which the value of the majority of the articles is greatly increased; to remark upon the total absence of any allusion to the law of domestic relations; and to mention two minor errors noticed respecting English law. Both of these occur in Professor Tooke's excellent contribution on "The Progress of Local Government, 1836-1936." Owing to the frequency of so-called private acts regulating and amplifying the powers of cities, municipal organization is by no means uniform in England. And the statement that "in England women under thirty years of age may not exercise the franchise" ceased to be true in 1929, under the Act of the previous year which assimilated the franchise of men and women for both parliamentary and municipal selection.

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The English Business Company after the Bubble Act, 1720-1800. By Armand Budington DuBois. New York: Commonwealth Fund, 1938. Pp. xxii, 522. \$5.00.

Students of the corporation law have long realized the gross inadequacy of law reports and statutes as sources of information as to the legal forces actually operating to control business practice. In the words of Professor Goebel, "There waft into the courts only occasional gusts in the varied and perpetually changing weather of commercial transactions. A climate cannot be delineated from a jar of captured rain-drops."¹ The present volume, however, represents probably the first successful effort to unearth materials from which a more adequate picture may be painted. Mr. DuBois has combed general sources such as periodicals and pamphlets and has struck a rich vein of material in records of proceedings before administrative officers of the Crown. But even more effective is his use of minute books and correspondence in the archives of a score or more of the large companies of the period, and particularly the private opinions given by counsel. A surprising number of these opinions has been unearthed in corporate files, at the Inns of Court, and in other private and public archives. As earthy material for an understanding of law in action, these opinions are surpassed only by confidential communications of business men to each other. Thus Matthew Boulton, the associate of James Watt, has left immortal evidence of the appreciation of one practical advantage of the unincorporated form of organization. In 1788 he

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¹ P. vii.

wrote with respect to an action against the unincorporated Cornish Metal Company of which he was a member:

I was served with a copy of a Writ for the first Time in my Life at the Suit of a long List of Counts, Marquises, Chevaliers, etc., commonly known as the Romilly Company I advise [the Committee of Management of the Cornish Metal Company] to be particularly cautious how they put it in any one's Power to furnish the Pimps of our Adversaries with any List of the Names of the Members of Our Company. I think it would not be amiss to make a few Transfers.²

The period covered by the study opens with the passage of the Bubble Act in 1720. Following Maitland, the author pictures the act as an effort of a panic-stricken Parliament to check the evils of frenzied finance. In this connection, it is regrettable that the author was apparently not able to deal in some way with the gossip purveyed by Collyer that the act was the product of the South Sea Company's lobby in an effort to check invasion by new enterprises of the market for its shares.³ In terms, the act was directed only at companies organized without royal charter or act of Parliament. Mr. DuBois shows, however, that for several decades after its enactment, the policy supposed to underly it was discussed by Crown officers in passing upon petitions for royal charters. In this period there were a number of cases in which charters were granted subject to special protective provisions such as prohibitions of transfer of shares during an initial period, limitation of amount of stock, etc. More frequently, however, the petitions were denied, and business men came to use unincorporated forms in many cases in the very teeth of the Bubble Act provisions. The author expresses regret that the Crown officers, by a policy too strict in acting upon applications for charters and too lax in ignoring violations of the Bubble Act, missed its opportunity to continue experiments in administrative control. During this period counsel specializing in company matters came into their own, as would be expected when business was faced with a vague penal statute and obscure, hesitant administrative action.

It is usually a surprise to students of business organization to learn that limited liability and incorporation have not developed hand in hand. Even in the eighteenth century, many corporations had no fixed capital invested by its members, no "joint stock," and the members were expressly made subject to assessments (leviations) and often without stated limit. In such cases there was precedent in the House of Lords for proceedings by creditors to force such assessments for their benefit.⁴ And even where the assessment power was restricted, limitation of liability was apparently not the principal reason for incorporation until the nineteenth century. The securing of monopoly privileges, the protection of corporate property from personal creditors of members, and many other reasons were of importance at least equal to that of limitation of liability. Mr. DuBois makes it clear, however, that it was almost universally believed that, in the absence of charter provision on the contrary, incorporation would immunize members from personal liability. That no leading case can be cited for this proposition may perhaps be attributed either to the vitality of the corporate entity principle or to the late development of vicarious liability in general.

After separate chapters devoted to corporations and to unincorporated companies,

² P. 262, n. 90.

³ Collyer on Partnership (1st Am. ed) 619, cited by Warren, Corporate Advantages without Incorporation 329 (1929).

⁴ Salmon v. Hamburgh Co., 1 Chan. Cas. 204 (1671).

many specific problems of internal organization and finance common to both forms are then considered: powers of directors, dividends, treasury stock, stock transfer, to mention only a few.

One might question the aptness of some of Mr. DuBois' light touches. Thus in referring to a report of the Attorney General adverse to a petition for incorporation, he says, "Pounds, shillings, and pence were marshaled with vehemence to show the lack of merit in the Warmley enterprise, and use was thus made of the factual approach, that great intellectual discovery of the Coolidge era."⁵ Nor are the implications of the following passage entirely clear: "One of the most interesting problems in the history of every human institution is the position of the minority, the salt of the earth, who do not choose to conform to the dictates of the majority."⁶ But in general the book is lucid and readable and the conclusions seem cautiously drawn.

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Cases and Materials on the Legal Profession. By Elliott E. Cheatham. Chicago: The Foundation Press, Inc., 1938. Pp. xviii, 558.

Ordinarily, a review of a casebook on legal ethics should begin with an apology. That none is offered in this instance is due to the belief that the present casebook on the subject is unique, and that it is significant for the struggle currently taking place in the field of legal education. It is assumed that any effort made toward clarification of the problems involved therein should have, and will receive, the attention and consideration of the legal profession and, especially, of law teachers, whether teaching the subject of legal ethics or not.

The year 1921 marks an important stage in the movement by which law school education has succeeded in practically eliminating all other methods of legal education. In that year the American Bar Association adopted certain requirements which it insisted be met before it gave its stamp of approval to any form of legal education. Two of these requirements were (1) that this education should consist of three years study in a law school meeting specified standards, and (2) that this be preceded by two years study in a college. The action so taken and the subsequent efforts to get the resulting program of legal education adopted gave vigorous impetus to the movement then already taking place among law schools along similar lines, and today some eighty law schools, graduating the majority of the lawyers being admitted to the bar, meet these requirements or more.

These developments were but evidences, and a product, of a persistent public dissatisfaction with the legal profession of the country that dated back, at least, as far as the beginning of the present century. By the early twenties, criticism was widespread that the legal profession was losing its former leadership, that it was blind to the current problems of the day, and that it failed to correct, and even actively opposed correction, of abuses and defects in its own field.

Those sponsoring the adoption of the requirements of the American Bar Association believed that two years spent in the study of the sciences, of the literature of our culture and of the arts would develop a broad cultural background that would provide a proper basis for the later study of law, and that the later training in law would then

⁵ P. 31.

⁶ Pp. 302-3.

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