

**Securities and Exchange Commission: Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees, Part VIII. A Summary of the Law Pertaining to Equity and Bankruptcy Reorganizations and of the Commission's Conclusions and Recommendations.** Washington: Government Printing Office, 1940. Pp. viii, 471. \$0.50.

The seemingly tireless government presses have recently produced a volume which is likely to be of considerable interest to reorganization lawyers, teachers and judges. It is the last of an eight volume, four thousand page report rendered to Congress by the Securities and Exchange Commission in connection with the latter's investigation into the work and activities of protective and reorganization committees. The inquiry, which was at one time headed by William O. Douglas, now Mr. Justice Douglas, covered a period of several years and involved the examination of large numbers of witnesses. The previously published seven volumes constitute a textual statement of the work, activities and practices of reorganization committees as developed at the SEC hearings, a statement frequently amplified by extensive quotations from the testimony of witnesses and reference to exhibits used in the course of the hearings. It is by all odds the richest existing repository of source material on protective committees and their activities.

The last volume of the report, Part VIII, departs from the pattern of its predecessors. The subject matter may, for purposes of convenient treatment, be classified roughly into two broad divisions:<sup>1</sup> the first involving a compilation of legal studies centering around the protective committee and its activities, the other centering around certain key reorganization problems which will be described later.

The studies in the group relating to protective committees comprise too wide a range of subject matter to permit of complete reference here. Of especial interest, however, are those relating to the availability of bond- and stockholder lists to competing committees, to the law governing interpretation of instruments of deposit, to the binding effect of withdrawal provisions in instruments of deposit, and to the revocability of powers of attorney given for reorganization voting purposes. There are helpful studies of exculpatory clauses purporting to absolve committee members from liability for negligence and misfeasance, and of the legal effect of provisions according protective committee members permission to trade personally in certificates of deposit and in securities of the involvent debtor. The study of protective committee compensation and expenses deserves particular mention. It clearly analyzes the perplexing problems incident to the allowance or disallowance of protective committee compensation and presents a valuable criticism and appraisal of the legislative approach attempted under Section 77B as well as a clear statement of the solution projected under

<sup>1</sup> The report also contains an excellent general outline and critique of the equity reorganization procedure both in the federal and state courts, as well as a valuable discussion of the inadequacy of the ordinary bankruptcy act as a reorganization vehicle. In addition, the appendix sets forth a number of exceedingly valuable studies on subjects germane to the main report. These include reorganization through the use of the power of sale in trust indentures and through the trustee's power of purchase, an examination of the manner of control exercised over railroad protective committees under § 77 of the Bankruptcy Act, two extremely valuable studies of the regulation of protective committees under the Michigan and California statutes, and an SEC study of certain aspects of the administration of § 77B based on a docket study of the files of an Illinois and a New York district court.

Chapter X. The discussion of the legal position of the protective committee throughout these studies is keyed to the legislative changes accomplished by Section 77B, Chapter X, the Securities Act of 1933, and the Securities and Exchange Act of 1934. This section of the report also includes the conclusions and recommendations of the SEC pertaining to statutory changes deemed necessary or desirable.

The second broad division of the subject matter of Part VIII of the report comprises a further critical legal study of certain reorganization problems which have no particular connection with protective committees. The first study of the group, which deals with conditions governing the initiation of statutory reorganization proceedings, contains an analysis of the "good faith" provisions of Section 146 of Chapter X which is the best that has come to the writer's attention. The second study deals with equity and statutory reorganization techniques governing the administration of insolvent estates while in the courts, and the third with the treatment accorded the reorganization obstructionist and the dissenter in good faith, both in equity and under the new reorganization statute. The latter study contains a particularly valuable interpretation of the unenlightening "good faith" requirement of Section 203 of Chapter X. The last study of the group contains an admirable exposition of the doctrine of the "fair and equitable" plan as it is embodied in Chapter X.

It is unlikely that many students of corporate reorganization will care to be without a copy of Part VIII of the SEC report on protective committees. The high quality of the legal studies it contains is unmistakable. And an especially valuable characteristic of the report, one which is too often lacking in the typical legal dissertation, is the constant reference which it makes to the manner of operation of the statute or legal doctrine under consideration. The greatest significance of this volume of the report may, however, lie in the fact that the new reorganization act, Chapter X, was principally the work of the SEC. It is not unreasonable to anticipate that the views expressed in the report may have a considerable effect on judicial decisions turning on an interpretation of that statute.

WARNER FULLER\*

---

Cases and Materials on Property Security. By George E. Osborne. St. Paul: West Publishing Co., 1940. Pp. lxiv, 1039. \$6.00.

The late Dean Parks published his casebook on mortgages in 1926. It contains 587 pages and about 206 cases. Professor Osborne's casebook is in no sense a mere second edition of Parks, but Parks' material has been used and the more important cases in Parks are repeated in Osborne as well as the footnote material. The total number of cases is about 295. While Parks' book covers principally real property mortgages, and only incidentally chattel mortgages, Professor Osborne treats the entire subject of property security, and hence much additional matter on pledges, chattel mortgages, conditional sales, and trust receipts is included. The book is thus suitable for a school which wishes to consolidate all its property security material and to remove from the subjects of sales and property law such topics as pledges, trust receipts, and conditional sales.

One of the most notable features of Professor Osborne's book is his addition of the new security law which has developed as a result of the depression. For example, he

\* Professor of Law, Washington University.