

BOOK REVIEWS

Understanding the Securities Act and the S.E.C. By Edward R. McCormick. New York: American Book Co., 1948. Pp. viii, 327. \$7.50.

In spite of the favorable auspices under which the Securities Act of 1933 was sponsored and ultimately enacted, its adoption caused considerable concern, if not consternation, in investment banking circles. Although there was a general recognition of the need of some effective Federal legislation to govern the sale of investment securities to the public, it was felt by many connected with the securities business (e.g., investment bankers, lawyers, accountants, and engineers) that the Act would lead to delay, confusion, and added expense, and would constitute a serious impediment to the business of promoting the nation's financial transactions. Not so long after the Act was put into effect, Mr. James M. Landis, the Chairman of the Federal Trade Commission, which was originally charged with the administration of the Act, appeared before a large and representative group of Chicago businessmen to explain in a general manner the operations of the new law. It can fairly be said that Mr. Landis was met with considerable hostility, and, although it was generally recognized that he gave a brilliant analysis of the Act, many of his listeners came away continuing to believe that the Act would do more harm than good. Fifteen years have served to convince most of the critics of the Act that it is indeed an enlightened piece of legislation, and that it should have been enacted many, many years sooner.

Mr. McCormick's new book, in a quiet, logical, and convincing manner, serves to remind us again of the reasons legislation in this field was required. He has very properly devoted an introductory section to point out again the evils which the Act sought to correct. The history of English laws relating to the issuance and trading of corporate securities (where the problem was tackled in 1696 rather than 1933!) is highlighted; the inadequacy of the state Blue Sky Laws is touched upon; the over-all objectives of the Federal Securities Act are set forth. The Securities Act of 1933 is essentially an act requiring full and fair disclosure of pertinent information relating to securities sold in interstate commerce and through the mail. Its objective is to prevent fraud in the sale of these securities by forcing the seller to tell all relevant facts about them. Mr. McCormick says: "The basic policy underlying the Act is that of informing the investor of the facts concerning securities and providing protection against fraud and misrepresentation. Its objectives are to prevent the exploitation of the public by the sale of securities through misrepresentation, to place adequate and true information before the investor and to protect legitimate enterprises against the competition of fraudulent promoters in the sale of securities to the public." Although these objectives are sometimes overlooked in the busy work-a-day world, no investment banker, accountant, or lawyer of integrity, and certainly no business corporation operated by an honest management which requires additional capital for legitimate business purposes, can take issue with the need and propriety of legislation effectuating this basic policy. For those who may have forgotten or may have never thoroughly understood the pur-

poses of the Act, Mr. McCormick's book is an excellent restatement which should be read and studied.

In reviewing the historical background of the legislation, Mr. McCormick not only recalls the need for full disclosure and publicity in the sale of securities, but also describes the lack of any effective remedy for the gullible investor prior to the enactment of the law, and graphically illustrates why the investor needed more effective remedies to redress the wrongs inflicted upon him through the purchase of fraudulent securities. In the exhaustive chapter on the civil liabilities imposed by the Act, the reader is reminded of the relatively helpless position the defrauded investor found himself in because of the burden of proof he was required to sustain as plaintiff. The Securities Act now gives him an effective remedy, in fact, a very potent one. The chapter of the book on civil liability analyzes this remedy, and also undertakes to sound a very important warning to persons involved in floating securities. One of the most serious criticisms of the Act stemmed from the very severity of this portion, but since the liability imposed can be avoided by the exercise of common honesty, decency, and integrity, the possible hardship to those connected with the sale of securities is a cheap price to pay for the protection given the innocent investor who supplies the funds for so many businesses upon which the financial security of the nation rests. As a matter of fact, by merely putting the fear of personal liability into the minds of those engaged in the sale of securities, the Act has effectively accomplished one of its major purposes, so that the investor automatically is protected before rather than after the purchase.

The Federal Securities Act of 1933 differs quite materially from the English laws having the same objective. Mr. McCormick points out that the Securities Act obtains its objective of full and fair disclosure not merely by providing legal sanctions for failure to disclose, but through the cooperation of those regulated and with the help of an efficient administrative body. Administrative authority is given to the Securities and Exchange Commission not only to make the necessary rules and regulations for the administration of the Act, but also to examine registration statements to determine whether they are accurate and complete on their face. Mr. McCormick recognizes that "much of the success of this legislation depends upon the alertness, aggressiveness and ability of the administrative personnel." While the responsibility of the Commission and its personnel is recognized, the book might, perhaps, have pointed out more emphatically the vital position which the Commission occupies in our American system of private economy. Although the Commission does not have specific power to pass on the merits of the securities offered for sale, it could easily, through an over-technical, unsympathetic, or recalcitrant administration, block the all-important vehicles of fund raising upon which our economic life must depend. Actually, the Commission possesses one of the most powerful instruments for good or evil in our capitalistic system. It seems fair to say, however, that even if this basic insight might have been stressed somewhat more persistently in the book, the personnel of the Commission, including particularly Mr. McCormick himself, have fully recognized their heavy responsibility, have given the Act a fair administration, and, in so doing, have done much to overcome the hostility which was directed against the Act and the Commission in the early stages of their history. It would, of course, be ridiculous to assume that all of those who have dealt with the Commission and its personnel have come away with the belief that all is sweetness and light; yet it must be recognized by any impartial person who has dealt with or observed the functioning of the Commission under the Securities Act of

1933, that not only has the Commission and its staff possessed ability, alertness and aggressiveness, but it has combined these qualities with a full recognition of the objective of the Act and a fundamental fair-mindedness in the administration thereof. If Mr. McCormick's book serves no other purpose (and it has many others), it must demonstrate conclusively the essential sincerity and underlying integrity of the Commission and its personnel.

Mr. McCormick's book has four sections: the introduction, which discusses the historical background (previously commented upon) and general information with respect to the Act and the Commission; an interpretation of the Act; a section on the manner in which the Act has been applied; and a section devoted to the criticisms which have been leveled at the Act.

The second section is technical in its nature in that, true to its name, it interprets the provisions of the Federal Securities Act of 1933, as amended. The book is its own best spokesman; to summarize would be to exceed the realm of a review. Suffice it to say that each section of the Act is discussed in detail. The discussions are most valuable, since they carry the reader from a bare statement of the Act to a thorough explanation of its operation. The discussion is particularly useful, since many of the sections of the Act, such as the definition of "securities," "issuers," "underwriters," and particularly "securities exempted" and "transactions exempted," are self-executing. The practitioner who is consulted on problems arising under these sections must make his own decisions as to whether the Act is applicable, and he can receive no better instructions on the serious problems which frequently arise than to seek Mr. McCormick's help as given in this portion of the book. As previously stated, the chapter devoted to civil liability must be studied by lawyers who have work in this field, not only for the protection of their clients and those associated with the client, but also for their own personal protection. Mr. McCormick succeeds in making this section particularly vivid, and anyone who reads the chapter should have a sympathetic understanding of the reasons for imposing the liability, and will also have a guide as to how the obligations under the Act may best be discharged.

The third section of the book is a collection of examples of the type of work which the Commission undertakes in examining registration statements. Mr. McCormick has chosen a series of actual registration statements which have been filed with the Commission and which show exactly the material presented to the Commission and its manner of treatment. This is an extremely entertaining section; not only does it illustrate the problems which the practitioner encounters, but it also demonstrates the reasonable approach which the Commission has taken toward these problems. One need only read some of the fantastic material submitted to the Commission to realize that disclosure of full information in connection with the sale of securities to the public will always be a crying need to protect a system of economy which depends, as does ours, on the investment of capital in private corporations. Mr. McCormick's treatment is very effective in that he sets forth the facts, gives the Commission's rulings, and lets the reader draw his own conclusions. Mr. McCormick has selected examples where the Commission's rulings have been eminently proper; he has not set forth some of the examples wherein the Commission's orders have been irritating rather than necessary—instances where the Commission has verged on the arbitrary in connection with accounting procedure; where insistence upon information has done more to help the competitor than to inform the prospective purchaser; instances of minor mechanical

deficiencies which have sometimes evoked unnecessarily annoying and expensive rulings. (In order to flag a provision of preferred stock which the Commission properly felt should be explained to prospective purchasers of common stock, it was necessary to meet the deficiency not only by stating the provision in question on the facing sheet when the preferred stock was first mentioned, but to place an asterisk and footnote on every single page on which the reference to preferred stock was mentioned, 51 asterisks in all, to be exact! *Carpenter Paper Company*, 2-6112.) The examples given by Mr. McCormick, and his discussion of the subject, indicate that even though there may be delay, expense, annoyance, and sometimes hardships to which a legitimate enterprise may be subject, it is a small price to pay for the protection the investor receives against the careless, avaricious, or fraudulent security salesman.

The Securities Act of 1933 was not, when enacted, and is not even today, without its critics. In the fourth section of the book, Mr. McCormick faces the most important criticisms leveled at the Act—mentioned above—and, it is submitted, comes out well. Surely he has refuted the critics forthrightly and with conviction.

Mr. McCormick states that the book was written "in part to assist the corporation official, investment banker, lawyer or accountant who has only rare occasion to concern himself with the Securities Act." True, this book is invaluable to such individuals, but it would seem that Mr. McCormick has been somewhat too modest. The book might well be studied by and retained in the library of those whose practice regularly involves work under the Act. The expenditure of the few hours which are required to read the book carefully, should prove to be a valuable investment of time to the practicing lawyer who rarely, if ever, gets into the field of public financing, and to the law student who is seeking a rounded background in this branch of corporate practice. Also, it is hoped that the personnel of the Commission will have examined the book and absorbed Mr. McCormick's approval of the administration of the Act.

Mr. McCormick has done a prodigious amount of work in assembling the information contained in the book. Only one who has worked understandingly and continually with the administration of the Act could have produced this kind of book. Whatever the efforts were that have gone into it, they are well worth while. It can only be hoped that a similar searching and informative treatise be compiled with respect to the Trust Indenture Act of 1939, the Securities and Exchange Act, and the Public Utility Holding Company Act of 1935.

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Legacy of Sacco and Vanzetti, The. By G. Louis Joughin and Edmund M. Morgan.
New York: Harcourt, Brace & Co., 1948. Pp. xvii, 598. \$6.00.

Twenty-two years ago, after a trial and appeals spread over six years, two Italian-born, philosophic anarchists were executed by the Commonwealth of Massachusetts for murder committed during a payroll robbery. Massachusetts had not been a state singularly free of robbery, murder, or miscarriage of justice. Yet the question of the guilt or innocence of a skilled shoe-maker and a poor fish peddler divided America, and the world, brought forth recrimination and hysteria, and passed judgment not only on the accused but also on the true state of American democracy. For Nicola Sacco and Bartolomeo Vanzetti were executed as part of the struggle which determined whether

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