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A New Treatise of Private Corporations

Robert C. Brown
Indiana University School of Law

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REVIEWS

A NEW TREATISE ON PRIVATE CORPORATIONS*

This is unquestionably a remarkable piece of work. To attempt a comprehensive treatise upon the entire law of private corporations in a book of less than one thousand pages—and not extremely large or closely printed pages at that—is certainly a bold act; and to accomplish this attempt is a brilliant feat. This is precisely what the author has done. In this one-volume work of a handy and useable size, we have a thorough analysis of the entire law of private corporations. Considering the development of the past few years, which has generally relegated one-volume works on corporations to discussions of particular topics, some three to eight large volumes being required for a treatise upon the entire subject, this book is certainly unique.

As already indicated, completeness in treatment is not here sacrificed to brevity. Besides the text there is a full table of contents, a table of cases and an adequate index. In addition to all this, there is an appendix, which contains a model form of certificate of incorporation under the Maryland law, such certificate containing somewhat detailed provisions as to various classes of stock. This feature of quoting from actual corporation instruments is not confined to the appendix, since considerable excerpts from other similar documents will be found in the text. This indeed constitutes a very valuable feature of the book. The appendix also contains considerable excerpts from the Ohio corporation act which is supposed to contain the latest improvements—although certain provisions of this statute, especially those relating to stockholder's preemptive rights, have been considerably criticized.

The author has not hesitated to express his own views upon controverted points but has been commendably scruplous in presenting fairly both sides of the question. While this has necessarily been done with considerable brevity, the adequacy of the discussion has not been affected. It is believed that the author's conclusions will in general be accepted by the bar; but at any rate the present treatise can with profit be consulted upon any controverted point, for the author thoroughly and fairly analyses all aspects of such controversies.

There are at least two questions as to which the author's views are likely to give rise to considerable discussion. The first of these is with respect to the doctrine of ultra vires, the entire abolishment of which he seems to advocate. The reviewer is inclined to agree with this view but feels that the author proceeds in part upon the wrong theory for accomplishing it. The author suggests (p. 240) that

* Ballantine on Corporations. By Henry W. Ballantine. Chicago: Callaghan and Company. 1928. pp. lxix, 927. Price $5.50.

"A private corporation is not to be regarded as in reality a person created by act of law and invested with specified corporate powers and capacities, but as an association for business purposes, formed by act or contract of the parties under permission and formalities given by the law."

The theory thus advanced that a corporation is not really a person, the reviewer feels to be unsound but he believes that the recognition of corporate personality is in no way inconsistent with the abolishment of the ultra vires doctrine. Why cannot it be said, as indeed the Ohio Act seems to do, that a corporation is a person with all the powers that any natural person has, but that it is forbidden by the state to do certain things? If that is the case, a violation of the prohibition may result in the corporation being punished; but it will be unable to set up its own violation of law as an excuse from liability to any innocent person dealing with it.

The author also expresses considerable hostility to non-par-value stock. He says that the principal argument advanced in favor of such stock, is that par value is misleading to investors and contends that this argument is fallacious, since trained investors know that par-value stock is quite likely to be actually worth much less than its face value. That is perfectly true, but any one who has dealt with untrained investors, the number of which is by no means small and is not decreasing, knows that such persons are apt to have a very exaggerated idea as to the importance of par value. Obviously the actual nature of the two classes of stock is the same—each is really a proportionate interest in the corporate assets—and the trained investor knows this. But the untrained investor does not, unless his attention is called to the fact by the use of non-par-value stock. After reading the very thorough discussion of the entire subject of non-par stock in this work, the reviewer is convinced, notwithstanding the author's apparent hostility to such stock, that its invention is probably the most valuable single reform in corporate procedure in the last half-century.

No doubt the question has arisen in the minds of some persons reading this review as to where and how the author has abbreviated his work, so as to get it within its very moderate compass. The answer is in very large part, an extreme and almost unprecedented skill in succinct statement of principles. But a large mechanical saving has also been effected in the citations. This does not mean that the citations are inadequate. There are cases cited on practically every point, but a mere piling up of authorities has been avoided. In other words this is a treatise and not a digest. A very valuable feature of the citations is the large number of references made to articles in law periodicals. This will adequately point the way to a more thorough examination of any point of immediate interest.

The foregoing is believed to be a sufficient description of the book and nothing further of that sort is necessary. What the reviewer desires to do in conclusion is to urge, with all the ardor of which he is capable, that every person interested in

the law of private corporations, whether as student, teacher or practitioner, go forthwith and purchase this book, and consult it early and often. He will rarely find his money and time to have been better expended.

ROBERT C. BROWN.

Indiana University.