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## Book Review: Cases on the Law of Bankruptcy

William O. Douglas

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the opinions employ similar concepts (for diverse purposes) despite the fact that functionally the cases may have nothing in common.

The second stage in this "logical" unfolding of the subject is to consider the creation or formation of corporations with all the attendant problems of "de jure" and "de facto" corporations and corporations "by estoppel." Pursuing this "logical" sequence, the student is next confronted with the law as to "stock subscriptions" and as to "promoters." Then, while still reeling, he is sandbagged with "powers of corporations" and blackjacked with "ultra vires." If not completely ruined, he comes at last to the "powers of directors" and the "rights of stockholders," and finally begins to have some glimmering of understanding of the subject.

To the practitioner well versed in the subject this orthodox arrangement of the material may be highly logical, but as a vehicle for bringing the student most readily to a comprehension of corporate problems it would seem inadvisable. Rather should the student first be enabled to understand the normal functioning of an association which all authorities would agree was a corporation (the division of control between shareholders and directors, the duty of directors to shareholders, the relations of shareholders among themselves, their relations to corporate creditors, etc., etc.). With this picture well in mind the student would be far better equipped to study the legal consequences of alleged corporate acts which are not obviously within the factual authority of the corporation (so-called "ultra vires" transactions). And probably last of all he should be introduced to the problems involved in attempts to form corporations, for surely a knowledge of what he is seeking to accomplish is a pre-requisite to any intelligent endeavor to form a corporation, just as an insight into that which is normally comprehended by the term "corporation" is essential to an understanding of those combinations of facts and legal consequences which it is not feasible to describe by that term.

One of the features of the book is the author's treatment of those topics which are of comparatively recent origin or development. His exposition of the advantages and dangers of shares of no-par value, for example, is superb, especially in view of the size and scope of the volume. Similarly the law as to voting trusts is well stated. Unfortunately, the presentation of the problems growing out of the Blue Sky legislation is not quite so adequate, reference to many recent cases being omitted.<sup>1</sup>

ALEXANDER HAMILTON FREY.

*Cases on the Law of Bankruptcy.* By Evans Holbrook and Ralph W. Aigler. Second Edition. Chicago, Callaghan & Co., 1927. pp. xi, 650.

The second edition of this well known case book contains 602 pages of cases and an appendix setting forth 13 Eliz., the New York statute of 1829, the Uniform Fraudulent Conveyance Act and the Bankruptcy Act (with all of its amendments) followed by an index to the latter act. The number of cases is the same as that in the first edition and 1920 supple-

<sup>1</sup> See: *Bates, Trustee v. Firestone*, 19 Ohio App. 243 (1924); *Burlington Hotel Co. v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926); *Dixie Rubber Co. v. McBee*, 148 Tenn. 168, 253 S. W. 353 (1923); *Domenigoni v. Imperial Live Stock Co.*, 189 Cal. 467, 209 Pac. 36 (1922); *Goodyear v. Meux*, 143 Tenn. 287, 228 S. W. 57 (1921); *Guaranty Mortgage Co. v. Wilcox*, 62 Utah 90, 218 Pac. 133 (1923); *Hamlin County Livestock Co. v. Karlstad*, 48 S. D. 82, 202 N. W. 141 (1925); *Hancock v. Frederick Co-op. Merc. Co.*, 48 S. D. 1, 201 N. W. 714 (1925); *Neimeyer v. Dougan*, 31 Ga. App. 99, 119 S. E. 544 (1923); *Sherman v. Smith*, 185 Iowa 654, 169 N. W. 216 (1918); *Snitzler-Werner Co. v. Stein*, 234 Ill. App. 392 (1924); *Winifred Farmers' Co. v. Smith*, 47 S. D. 498, 199 N. W. 477 (1924); *Witt v. Trustees' Loan Co.*, 33 Ga. App. 802, 127 S. E. 810 (1925).

ment thereto. Some fifty odd cases appearing in the latter edition do not appear in this new edition. More than half of the substituted cases are cases decided since the date of the first edition. All of those cases in the 1920 supplement are retained except three. The method of arrangement is identical with that of the first edition. There are still five main divisions, *viz.*, Jurisdiction, Prerequisites to Adjudication, Administration, Compositions and Discharge. This edition is more compact than the former. The pages are larger, the quality of the paper seems better and the printing seems improved. And, finally, more foot notes appear. And occasionally these footnotes expand into short annotations. So much for general observations.

A criticism of this edition would be for the most part a criticism of the first edition. Only a few matters need be mentioned. All of the phases of "Preferences" presented under "Prerequisites to Adjudication" do not logically belong there. Sections 57 (g) and 60 (b) obviously have no bearing on "Acts of Bankruptcy." Similarly, *Dean v. Davis*<sup>1</sup> is a decision under § 67 (e) and not under § 3. Numerous other examples could be cited.

The answer may be that the arrangement, though not logical, makes the subject matter more teachable. That obviously was the editors' purpose. And the answer, supported by more than twelve years' teaching experience, would seem decisive.

On a matter of greater substance, however, the reviewer would be more critical. The cases under Fraudulent Conveyances would seem to contain too many cases representing non-commercial transactions, in number somewhat out of proportion to the importance of that type of transaction in the average bankruptcy proceeding today. The editors have many precedents for their case. But the reviewer feels that progress has been made by relegating *Reade v. Livingston*<sup>2</sup> to a footnote. And, it is felt, further progress could have been made. This seems more vital when it is realized what important and significant commercial transactions might have been profitably introduced or further developed: absolute deeds intended as mortgages, mortgages under which mortgagors retain possession, floating charges, assignments of book accounts. These now remain practically untouched. Further, the importance of conditional sales and trust receipts would seem to have warranted giving some treatment to them also, especially in light of the scope of § 47. As stated in the preface, "If the selected cases are to the point, inevitably in large measure they are going to be in a sense illustrative." Nevertheless, the variety of problems raised by the use of these various security devices would seem to have warranted a more extensive treatment. Also, the significance of § 67 (d) would seem to have justified the editors in giving it more consideration than they have.

One misses landmarks like *Carey v. Donahue*,<sup>3</sup> *Martin v. Commercial National Bk.*,<sup>4</sup> *Clarke v. Rogers*,<sup>5</sup> *Richardson v. Shaw*,<sup>6</sup> *New York County Bk. v. Massey*,<sup>7</sup> and a few others. However, they seem to have left no gaps. And quite often an annotation explains the absence. On the other hand one welcomes *Sexton v. Kessler*,<sup>8</sup> *Bailey v. Baker Ice Machine Co.*,<sup>9</sup> *Lewis v. Roberts*,<sup>10</sup> etc. They seem to have filled gaps.

<sup>1</sup> 242 U. S. 438, 37 Sup. Ct. 130 (1917).

<sup>2</sup> 3 Johns. Ch. 481 (N. Y. 1818).

<sup>3</sup> 240 U. S. 430, 36 Sup. Ct. 386 (1916).

<sup>4</sup> 245 U. S. 513, 38 Sup. Ct. 176 (1918).

<sup>5</sup> 228 U. S. 534, 33 Sup. Ct. 587 (1913).

<sup>6</sup> 209 U. S. 365, 28 Sup. Ct. 512 (1908).

<sup>7</sup> 192 U. S. 138, 24 Sup. Ct. 199 (1904).

<sup>8</sup> 225 U. S. 90, 32 Sup. Ct. 657 (1912).

<sup>9</sup> 239 U. S. 268, 36 Sup. Ct. 50 (1925).

<sup>10</sup> 267 U. S. 467, 45 Sup. Ct. 357 (1925).

The sequence of cases, the choice of cases, the editing of cases,—each is a job well done. The footnotes, enlarged and made more suggestive, will be of considerable aid to student and teacher. The important additions to and changes in the law have been carefully noted. The addition to the appendix of the Uniform Fraudulent Conveyance Act will make the book increasingly useful as the adoption of that act continues. By and large the subject of bankruptcy with its 13 Eliz. background has been covered. A variety of materials is available to the instructor. In fact, the reviewer concludes that the availability of this new edition will make the choice of a case book less of a problem wherever bankruptcy is still taught as a separate subject.

WILLIAM O. DOUGLAS.

*The Law of Aviation.* By Rowland W. Fixel. Albany, Matthew Bender & Co., 1927. pp. xv, 403.

*Law of the Air.* By Carl Zollman. Milwaukee, The Bruce Publishing Co., 1927. pp. xvi, 286.

To anyone who is called upon to examine authorities on questions relating to aviation in the course of his practice any book rescuing him from interminable searches through improperly indexed works is welcome indeed. In so new a subject as aviation three things are needful.

First: Such actual scattered decisions as exist directly passing on aviation questions proper.

Second: Ready reference to statutes on the subject.

Third: A careful selection of analogies with supporting cases on questions that are still open and undecided by direct decision or by legislative act.

The two books by Mr. Fixel and Professor Zollman are complementary to each other and together meet the requirements suggested, of anyone, whether student or practitioner, who is interested in the law of aviation.

Mr. Fixel emphasizes the statutory phase of the law of aviation. He has published not only the Federal Air Act of 1926 with the Air Commerce Regulations issued pursuant thereto, but he has also printed in full laws of 27 states that in one form or another relate to aviation. Such a collection, together with the International Convention Regulations of Aerial Navigation of 1919 covering some 240 pages is in itself a compact and important book of reference.

The statutes are preceded by the text of some 125 pages in which Mr. Fixel, writing, as he explains in his foreword, "for the lawyer and the layman," gives a brief historical legal synopsis of the subject. He discusses the law of aviation with reference to other branches, such as civil and military law and admiralty jurisdiction, and refers briefly to the early discussions of the questions of international law connected with aviation and their crystallization in the Convention of 1919.

In the sphere of private law he outlines the question of the right of flight over private property, concluding that this right in practice is so firmly established as to render the old maxim of ownership of the air space nugatory. He mentions the question of the tort liability of the operators of aircraft but does not discuss the question as to the liability in case of injury to passengers, confining his remarks to the damage to persons on the ground and the absolute liability therefor suggested by writers and by the Uniform State Law.

His chapter on the damaging effect of aviation on insurance contracts shows the unsatisfactory state of the law in this important element in the proper development of aviation. For the rest he outlines federal legis-