REVIEWS

CASES AND MATERIALS ON CREDITORS' RIGHTS. Third Edition. By John Hanna† and James A. McLaughlin.‡ Chicago: The Foundation Press. 1939. Pp. xxviii, 1144 (and supplementary pamphlet). $7.00.

The new edition of Professor Hanna's well-known casebook on insolvency, prepared by Professor Hanna and Professor McLaughlin, is too clear and full of material to give a reviewer much opportunity for parading his victims' minor sins. Questions of detail arise, of course,[1] and there is at least one omission that may turn out to be an important flaw in the plan of the book.[2] But as a whole "Creditors' Rights" is a sample of the best kind of academic workmanship, thorough, painstaking and critical in its presentation of doctrine.

For all the finesse of its execution, however, "Cases on Creditors' Rights" is to my mind a casebook of limited uses, because of the scope and order of the materials it contains.

The plan of Professor Hanna and Professor McLaughlin in arranging their materials suggests comparison with that of Professor Sturges in his "Cases on Debtors' Estates." The two books conveniently represent the principal division of views among workers in the field. Both include approximately the same topics, and present them with comparable skill, but they differ altogether in organization. To the present reviewer (on the whole inclined to Sturges' plan rather than to Hanna's and McLaughlin's) the main problem presented by "Cases on Creditors' Rights" is to judge the appropriateness of its design.

The evaluation of a scheme for arranging a casebook requires answers to two obvious but inevitable questions. In the first place, what are the materials being put together, and how do they limit the choice of plans available to the casebook-maker? And in the second place, what educational objectives are to be served by studying this particular group of cases, in this particular order?

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† Professor of Law, Columbia University.

‡ Professor of Law, Harvard University.

1 On may question the occasionally severe editing of cases; the careful study of the fraudulent conveyance tradition both alone, and as applied in receivership, bankruptcy and corporate reorganization proceedings; the absence of much emphasis on the practice of credit bureaus and credit men's associations, or on the commercial importance of all problems connected with the assignment of claims; the length and focus of the materials on equity receivership, and the failure to direct those materials at the emerging problems of state court reorganizations, both in the real estate field and under statutes like Section 59 of the Uniform Business Corporation Act. Some of these matters are well discussed by Professor Billig in his review (1940) 26 Va. L. Rev. 395.

2 No cases, and only half a page of text, are devoted to the problems of Chapter XI of the Bankruptcy Act, although there is a 230 page chapter on Chapter X. Since Chapter XI has proved so far to be the most popular of the new sections of the Act, and is an important vehicle for corporate reorganizations, as well as for the relief of individual debtors, the omission of any material devoted to it ranks as a serious defect in the book. Furthermore, the peculiar and unsettled relation between Chapter X and Chapter XI offers a striking chance to analyze the functions and procedures of the two chapters by comparing them; this opportunity is not readily available to those who use this book. See Securities and Exchange Commission v. United States Realty & Improvement Co., 108 F. (2d) 794 (C. C. A. 2d, 1940); In re Credit Service, Inc., 31 F. Supp. 979 (D. Md., 1940); In re Reo Motor Car Co., 30 F. Supp. 785 (E. D. Mich., 1939). Montgomery, "Defects in Chapter XI of the Bankruptcy Act and Suggested Amendments" (1939) 25 Va. L. Rev. 881; note (1940) 49 Yale L. J. 927. In the Southern District of New York there have been 337 cases under Chapter XI, and only 26 under Chapter X, from the time the Chandler Act went into effect up to January 1, 1940. Of the Chapter XI cases a considerable number have involved the reorganization of relatively large corporations.

The law concerned with insolvency has grown enormously in the recent past. A federal bankruptcy act, in force during eighteen years of the nineteenth century, is an accepted part of the commercial and financial machinery of society. The National Bankruptcy Act, responding to a great depression, has become a monster of fifteen chapters and 80,000 words, and offers at least one remedy for almost every situation of financial distress. And the Bankruptcy Act does not describe the only establishment for administering debtors' estates. There are state insolvency statutes, and statutes regulating receiverships and assignments for the benefit of creditors; there are non-statutory judicial procedures of administration, both state and federal, still in a state of active survival, and some non-judicial procedures. Taken together, these make a formidable and planless collection of remedies for settling the conflicts which accompany the event of individual and commercial failure.

How and to what ends are these Gargantuan materials to be investigated? All parties, I suppose, would agree that training in tactics for the war between debtors and creditors is not the only object for the study of insolvency proceedings in a university law school. The proper study of insolvency as a social phenomenon involves considerations of policy beyond the traditional limits of courtroom dialectic. Of course, the system of administering insolvent estates cannot be understood at all without examining the effort of debtors to evade payment, and of creditors to obtain it, and such a study is necessarily much concerned with questions of priority among claimants, methods of administration, and the art of fraudulent conveyance. To describe habitual patterns for the settlement of disputes like these requires a consideration of the scope and history of many doctrines. But doctrines alone, to paraphrase Selden, are "nothing but History dully taken up." Especially in this branch of commercial law, they are not enough to make law students or lawyers "Masters of the things they write and speak." A diet of doctrine, even in refined and subtle formulations, will give students intellectual rickets unless it is supplemented with doses of other things. Perhaps the most important fact about the insolvency system is that the pressure to change it never lets up. It is a platitude, or worse, to urge that the study of insolvency proceedings must offer criteria to guide this process of reform.

A year or so ago Professor McLaughlin explained his views on the problem of arranging materials for the study of insolvency proceedings, in a review of Professor Sturges' "Cases on Debtors' Estates."[3] That book, he said, was organized functionally. Instead of considering the several devices used in the administration of insolvent estates one by one, Professor Sturges attempted to analyze them comparatively. A series of sections in the first part of his book introduced the main methods of settlement by describing their objectives, and the problems of federalism which arise largely because of their existence side by side. Then, with his subject matter defined, Professor Sturges turned to issues which are common to all such proceedings: judicial administration, collection and proof of claims. These he illustrated with cases arising in bankruptcy, equity receivership and in proceedings on assignments for the benefit of creditors. Professor McLaughlin found this arrangement stimulating but "definitely . . . not helpful. . . . The achieved intellectual feat of putting authorities from diverse proceedings in suggestive contrast seems operative in the direction of retarding the student's grasp of what it is all about." "Cases on Creditors' Rights," on the other hand, uses the scheme of Professor Hanna's earlier editions. The early chapters concern the remedies available to creditors in satisfaction of a judgment or in aid of jurisdiction—attachment, execution, supplementary proceedings and bills to reach fraudulent conveyances. The argument is interrupted for short chapters on compositions and assignments, and is resumed with materials on receiverships and bankruptcy, including a two hundred and seventy page section on the systems

[3] Book Review (1938) 47 Yale L. J. 1229. On these matters, the reader should discount for himself the significance of the fact that the reviewer has been teaching from Sturges' book, and is engaged in helping to prepare a revision of it.

of relief provided by Section 75 and Chapter X of the Bankruptcy Act. Every phase of each proceeding is described in splendid isolation; there is little or no cross-fertilization between the parts of the book.

As compared with a "functional" arrangement of the materials, the plan of "Creditors' Rights" has two major weaknesses: it is too academic in the preparation it offers for legal practice; and it is not academic enough to give students a perspective on the insolvency system as a working whole.

Professor McLaughlin's main reproach to Professor Sturges' book was that it put on a class the burden of considering several things at once. "More action could take place on the stage," he said, "if so much classroom time were not consumed in shifting the scenery." Several aspects of the arrangement of "Creditors' Rights" are suggested by this criticism. In the first place, as a matter of personal classroom experience, I conclude that the task of "scene-shifting" is not very difficult nor time consuming, since the scene-shifting stage comes after the class has studied the structure and objectives of the several systems of administration and has a reasonable familiarity with them. But even so, the metaphor is a little misleading as a way to describe the technique of comparative study: in one sense, there is no scene shifting at all, since the subject matter in each section is a single commercial problem, and the ways in which it can be resolved. After all, the unstated premise of books which include materials about bankruptcy, equity receiverships and other insolvency procedures is that these procedures have something in common: i.e., that they are related legal methods of dealing with the same or similar social events. If a student is not expected to compare these proceedings in action, why are they put before him in one book? If he is expected to compare them, (and I assume that Professor Hanna and Professor McLaughlin want him to make such comparisons) how can he do so in any detail without comparing results in similar cases under the different forms of procedure?

The burden of making such a comparative analysis is not a matter of empty discipline; it cannot be avoided, even though it tax the energies of a class, if the materials are to help make law students into effective lawyers. The celebrated "functional" approach is, among other things, a step in the long history of efforts to bring the law of the schools closer to the law of the courts and the law offices. Like the case method of instruction, in its day, it represents an interest in making the study of law more realistic, i.e., both more practical and more critical. Consider, for example, the lawyers' daily problem of selecting an appropriate remedy. The lawyer who works with insolvency techniques at all is constantly required to choose among alternatives. The lawyer goes to one court rather than another because one proceeding is better adapted than others to the solution of particular problems which appear or which are expected to appear in his case. The student who is required constantly to appraise the methods of insolvency administration with reference to their uses in particular commercial situations is being trained as a practitioner to handle the insolvency remedies in a sophisticated and instrumental way. It follows also that he is considering the virtues of each rule as one of two or three alternative solutions for the same conflict of interests, and trying to discover reasons for a preference among them. A comparative study of the several insolvency proceedings in action requires an intensive analysis of rules against the background of their commercial settings, and in the light of the objects they are thought to serve.

The major defect of "Cases on Creditors' Rights," to my mind, is the absence from it of precisely the quality of this kind of analysis. By scattering the materials which illuminate the different resolutions of comparable problems, the book manages to be repetitive where it might have been exciting. And this difficulty cannot be overcome easily by using the book in an order different from that intended by the editors. The materials that might fruitfully be compared are too thoroughly divided to permit an easy reshuffling to suit an instructor's private values.

The plan of "Creditors' Rights" has another quality. By minimizing the number of occasions when the student compares the several methods of insolvency administration, the book makes it difficult to reach a level of generality which might permit the emergence of political or economic conclusions about considerable sections of the materials. We assume, sometimes not too convincingly, that constitutional cases in the Supreme Court raise a sufficient number of political issues to be canvassed in examining the ideas in terms of which the federal scheme of government is explained and conducted. But no such assumption can be made with respect to an economic criticism of the policies which shape a given body of law. "Cases on Creditors' Rights" has an adequate selection of the main constitutional cases on the political side of its problem, but it does not make readily available the legal documents which suggest major questions of economic policy; and when such materials do turn up in the book, they are widely separated, and cannot easily be matched together to illuminate the full scope of the issue they represent. Furthermore, the book does not supply readers with excerpts from, or references to, the parts of the economic literature which might require them to face the recurring difficulties of economic policy implicit in the structure of the insolvency laws: the issue on the one hand, of deciding when a business enterprise should be terminated, and on the other, of considering the conditions under which its rehabilitation should be permitted.

The difficulty is the familiar one of the trees and the forest. It is hard to get from "Creditors' Rights" a real impression of the system of insolvency administration in its business context. Each topic of technique is lovingly presented, with a haze of suggestive notes and footnotes. But the editors have not gone far beyond these isolated problems of technique. The scope of their material and their plan of arrangement alike discourage the effort to develop opinion as to the economic consequences of the insolvency remedies in this society or the relationship between commercial usage and legal doctrine in many parts of the insolvency system. Without the material for such efforts, is a casebook on the study of insolvency complete?

EUGENE V. ROSTOW.*

* Assistant Professor of Law, Yale University.