

## BOOK REVIEWS

*The Law of Unincorporated Associations and Business Trusts.* By Sidney R. Wrightington. Second Edition. Boston, Little, Brown & Co., 1923. pp. xlv, 658.

In business, as in almost every other form of human endeavor, the modern tendency sets strongly in the direction of collective action. The group succeeds the individual because men realize that combining resources of property or brain or muscle increases the power of the individuals within the group. It may also offer some other advantage, such as diminishing the individual risk of loss. So business is coming more and more to be done by associates. The operative facts of association, i. e. the terms agreed upon by the associates, their number, their compliance or non-compliance with corporation laws, their methods of doing business, etc., determine the legal relations which arise between the associates and between the associates and outsiders. If the facts give rise to certain legal relations, we call the associates partners. If another set of legal relations are created, we call the associates a corporation. When the association takes the form which has come to be known as the Massachusetts Trust, the legal consequences may be still different.

The principal reason for associating in the form of a business trust rather than a partnership is the desire to limit the risk of loss to the amount of the investment, in other words, to avoid the individual responsibility of a partner. This object can, of course, be attained by adopting the corporate form of association, but corporations have been subjected to numerous taxes and governmental regulations which the business trust has as yet escaped. If by doing business in the trust form the expense and supervision incident to corporate organization can be avoided without sacrificing the advantages of transferrability of shares and limitation of individual liability which are characteristic of corporations, business men may well select the trust form of association. Other advantages may also be found in the trusteeship. The increasing number of recent court decisions dealing with such trusteeships indicate a trend toward this form of business organization. But Mr. Wrightington wisely warns his readers that the trust with transferable shares is not the most efficient medium for the business man to employ in every case. "The corporation strictly regulated by the state must remain the normal expression of large coöperative action when public participation is invited. Too rapid growth of trusts will invite like complicated regulations, which will defeat its purpose."

The line which divides business trust from partnership association has not yet been very clearly plotted by the courts. The most recent decisions in Massachusetts and in the Supreme Court of the United States suggest that the criterion is to be found in the control which the beneficiaries exercise over the trustees, so that if the trust agreement provides for such control there arises a partnership, while if it does not so provide, a trust is created. See *Crocker v. Malley* (1919) 249 U. S. 223, 39 Sup. Ct. 270; see also Hildebrand, *The Massachusetts Trust* (1921) 1 TEX. L. REV. 127. The author reviews the cases on this subject in section 14 and discusses the interesting problem among others whether power in the beneficiaries to change trustees at stated intervals constitutes such control as to make the associates partners rather than beneficiaries of a trust. In the leading cases decided in favor of the trust, it should be noted that the trusteeships have been for investment rather than for the carrying on of an active business; and one distinguished writer has denied that lack of control of the trustees is the sole criterion of trust rather than partnership or that the beneficiaries can avoid personal liability for debts of an active business merely by vesting full control in the trustees. See William W. Cook, *The Mysterious Massachusetts Trust* (1923) 9 A. B. A. JOUR. 763.

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On many important problems of the law relating to unincorporated associations and business trusts further decisions by the courts are needed before one can predict with assurance. The law is still in the making, as Mr. Wrightington recognizes. Indeed, this very fact is the chief reason for this volume. Since 1916, when the first edition appeared as the pioneer monograph in this field, many cases have been handed down, supplying material for new discussion and for amplification of the author's earlier discussion. In general the arrangement adopted for the first edition has been followed in the second, but many sections have been completely rewritten and some new sections added. About one third of the book is devoted to an appendix of forms, one of which has been annotated with references to sections of the text where appear discussions of the legal problems involved. The book is primarily intended as a tool for practitioners and as such will be found invaluable.

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*Removal of Causes from State to Federal Courts*, by James Hamilton Lewis, formerly corporation counsel of Chicago and United States Senator from the State of Illinois. With an introduction by Elijah N. Zoline, of the New York Bar. With forms, one volume. New York, Clark Boardman Co. 1923. pp. 679.

This book will be useful to all interested in the Removal of Causes in the State Courts to the Courts of the United States. The subject is one with which few practitioners have had any experience and among such few the greater number not more than once or twice in the course of their practice. So far as we have been able to determine, it contains no inaccuracies.

Like most modern law books, however, it is spread over more pages than are necessary. This as usual is accomplished by a liberal use of printers' fat; and here also by the needless repetition at the head of each chapter of the table of such chapter's contents which is previously contained in the general table of contents. "Form No. 17" is no form; but an opinion of the District Court in a case affirmed on appeal in the Second Circuit. *Venmer v. Southern Pac. Co.* (1922) 279 Fed. 832; certiorari denied (1922) 258 U. S. 628, 42 Sup. Ct. 461. There is much matter in the text for which the notes are the proper place.

The introduction by Mr. Zoline is, as are most things that he writes, interesting; but in this book has little practical value.

The reader would have been saved much trouble if the publishers had pursued the usual practice of printing the section number in the caption of each page; since the table of contents, the table of cases and the general index refer to sections and not to pages, and many sections spread over several pages. But these faults are more properly attributable to the publisher than to the author.

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*Handbook of Equity Jurisprudence*. By James W. Eaton. Second edition, by Archibald H. Throckmorton. St. Paul, West Publishing Company, 1923. pp. xv, 711.

*Illustrative Cases on Equity Jurisprudence*. By Archibald H. Throckmorton. St. Paul, West Publishing Company, 1923. pp. x, 611.

Eaton on Equity, first published in 1901, is sufficiently well known to need little if any introduction to the readers of the JOURNAL. In preparing the new edition, the editor tells us that he has confined his work chiefly to "the citation of recent cases" and the "revision and extension of the text in connection with topics con-