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Equity Receiverships in the Common Pleas Court of Franklin County, Ohio

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BOOK REVIEWS

EQUITY RECEIVERSHIPS IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO. By Thomas Clifford Billig. Baltimore: The Johns Hopkins Press, 1932. Pp. xiii, 159.

It is one of our current paradoxes that a popular orator can obtain applause from the same audience for denunciation of investigating committees and an appeal for a planned society. When one considers the solid achievements of certain governmental investigating groups and the immense contributions to knowledge made by private legal and economic research, to say nothing of what scientific research has accomplished, it is evident that facile flings at research in general are, for the most part, undeserved. That is not to say that research projects have not merited a considerable part of the criticism they have received. Disregarding as unworthy of attention innumerable questionnaires masquerading as research, some major research projects, even where fruitful of results, have been marked by preliminary planlessness and a chaotic organization of the accumulated material that makes their work unavailable except to the most patient scholars.

The Johns Hopkins studies, of which Professor Billig's Receiverships in Franklin County, Ohio, is an example, have set a standard which while happily not unique, at least entitles the Johns Hopkins projects to a place among the most useful and illuminating current social studies. Johns Hopkins first surveyed existing enterprises in research in order not to duplicate completed studies or investigations in progress. Next it has taken sufficient time and devoted sufficient talent to preliminary studies in the projects undertaken to avoid, to a large extent, waste motion at the beginning. This preliminary planning has involved the closest association with local interests whose cooperation was valuable if not essential to the success of the study. Finally the Johns Hopkins studies have been entrusted to persons of skill and experience with a reputation for judicial qualities and candor. When these investigators have been equipped as Johns Hopkins has equipped them, with up-to-date mechanical devices such as tabulating machines as well as the best of technical assistance in statistics, one might well be optimistic about the contributions to be expected in the field covered by the research.

Reliable information was sorely needed about the administration of state equity receiverships. Recent bankruptcy studies under the auspices of bar associations, governmental agencies,

and universities have given us information upon which we can predicate some confident conclusions about bankruptcy. Trustworthy data are also available about assignments for the benefit of creditors, the so-called friendly adjustments, as administered under the auspices of the Adjustment Bureaux, Inc., founded by the National Association of Credit Men. What was needed to form a basis for comparative study of the various devices for administering insolvent estates was a body of facts equally illuminating about equity receiverships, both state and federal. Since Professor Billig had already contributed materially to public information about friendly adjustment and bankruptcy, it was only natural that he should be placed in charge of a receivership study.

The study in question is primarily about receiverships in Columbus, Ohio. Ohio is one of the few jurisdictions where insolvency administration is commonly a matter for the state equity courts. Columbus too is still a community of the individual proprietor and the small corporation. This study, therefore, has little to do with re-organization of interstate corporations. The investigation covered receiverships administered between January 1, 1927 and December 31, 1928. This period was chosen partly because it was a time of normal business conditions and partly because most of the cases had been closed at the time the study was made. A search was first made to locate receivership cases and subsequently the cases were studied in detail. The study covered procedural history, equity elements including business organization and management, names and occupations of officers and a financial analysis. The cases were classified into five groups, *viz.*, judgment creditor, simple contract creditor, mortgagee and mechanic's lienor, business association and miscellaneous. The information obtained was partly statistical and partly of a more general character.

The report, after an introduction discussing the purposes and methods of the investigation, takes up in the first chapter receiverships instituted by judgment creditors and divides these into two categories involving respectively immediate liquidation and operation of the business, the subsequent chapters dealing with receiverships instituted by other sorts of creditors. With some variation in the different chapters the report sets up facts relating to the institution of the receivership, its functioning, the cost of the administration, the degree of lawyer control and creditor control and the condition of the receivers reports. General dis-

discussion and statistical information are supplemented by narratives of specific illustrative cases.

There is nothing especially sensational in what Professor Billig discovered or what he thinks ought to be done about it. He found a certain nominal deference to the notion that a receivership is ancillary in character but a considerable tendency in practice to regard receivership as the actual remedy of the creditor. There was no strict enforcement of the rule that a judgment was a condition precedent to the obtaining of a receiver for an individual debtor. Most of the debtors appeared to have consented readily to the receivership proceedings and in general it was obvious that the receiverships were for the most part voluntary in character. The receivership device was used instead of bankruptcy although liquidation was expected in most receiverships because of the local feeling that bankruptcy machinery was slow in operation and awkward in producing desired results. The administration of the receiverships including the assembling of assets, filing of claims and sale of assets moved rapidly. Appointment of appraisers was apparently influenced occasionally by political reasons and other considerations of favoritism. Where the business was operated the receivers on the whole made a satisfactory record of profits rather than of losses. Administration was expensive, rarely costing less than 30% of the realized assets. Satisfactory local figures relating to the comparative expense of bankruptcy administration are not available, but such as Professor Billig quotes indicate that administration in bankruptcy costs somewhat less than administration by receivership in equity. Receivers' reports left much to be desired although the condition of the records seemed to indicate carelessness and ineffective supervision rather than dishonesty. Lawyers rather than creditors controlled the smaller receiverships although in the larger receiverships where business operation was essential, the operating receiver was generally a layman.

Professor Billig recommends that the Franklin County insolvency business should be concentrated in a single tribunal, that insolvency proceedings should be instituted through voluntary assignment, that the trustees and receivers should be authorized organizations rather than individuals and especially rather than lawyers, and that the liquidator should be given broader powers to make unnecessary continuous judicial supervision.

Comments upon Professor Billig's recommendations would require a discussion which would go beyond the limits of this re-

view. He is a little inclined to forget how serious it may be for lawyers who serve an inefficient system, which they have accepted, rather than created, and who depend upon it for livelihood, if the system is suddenly altered. The observation should perhaps be made, also, that since bankruptcy administration in the federal courts must continue in any event, the best chance for reform in insolvency administration may be to concentrate such administration so far as possible in the federal bankruptcy courts. Obviously such a suggestion can obtain no considerable support until federal bankruptcy administration is simplified and strengthened along the lines of recent proposals by the officials of the Department of Justice and others. In other words, when one is considering the relative merits of federal bankruptcy administration and state or federal equity receiverships one must take into account not what bankruptcy administration actually is, but what it might become.

Professor Billig and the Johns Hopkins Institute of Law deserve the sincere congratulations of the legal profession and the public generally for this monograph.

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THE STORY OF THE CONSTITUTION. By Howard B. Lee. Charlottesville, Virginia: The Michie Company, 1932. Pp. xii, 292.

This work was written for the purpose of making it easier for anyone to renew his "faith in, and Loyalty to, the constitutional system of government." As the objective is commendable, the reader will forgive too frequent effusions against radicalism, as expressed by United States Senator Smith W. Brookhart and others, and will follow instead its more scholarly pages which fortunately make up much the greater part of the volume. The author's conception of the constitutional system is perhaps best expressed in his agreement with John W. Davis that "The constitution [of the United States] has but two enemies, whether foreign or domestic, which are in the least to be feared. The first is ignorance — ignorance of its contents, ignorance of its meaning, and ignorance of the great things that have been done in its name. The second is indifference — the sort of indifference