

L'ENTREPRISE ET SON POUVOIR DE MARCHÉ,

By A. Jacquemin; Laval University Press, xi and 240 pp.

LES DEVOIRS DES DIRIGEANTS DE SOCIÉTÉS PAR ACTIONS,

By M. Giguère; Laval University Press, xvii and 250 pp.

These two books, of which the first is the copyright of Louvain University in Belgium and the second of Laval results from the concentration of money in a few hands directing corporations.

The first is an economist's book, and a lawyer has really no means of judging it. He will however notice that the traditional objective of concentration, namely to make money more efficiently for those who contribute the funds, yields place entirely to the more recently acknowledged purpose of making more effective the domination of the administrators of those funds. He will also notice that only two ways of checking this domination are proposed, namely intervention of an entity (the state) more powerful still and with its own policies to enforce, and the encouragement of competition so that the undertakings shall continue to fight for power but none shall ever win it.

This is not the lawyer's approach to the problem of power, which is to mark out certain limits which no contender may pass without giving his rivals the opportunity to invoke against him superior power—still the power of the state, but this time without any policy of its own, and concerned only to enforce predetermined rules at the instance of an interested party.

The second book is on the contrary a lawyer's book, and deals with these limits. It is moreover concerned with the protection against overweening managers not of other managers of even, except marginally, of the public interest, but of the shareholders who no longer interest the economist. It is true that separate treatment is given to the protection of the investing public, in their capacity of future shareholders, and occasional mention is made of creditors and, perhaps idealistically, of employees with a plea for their recognition as part of the company as they are economically of the enterprise.

Taking the fact of power for granted, Professor Giguere analyses in the first part of his book the concomitant duties recognised by the laws of France, England, Canada and Quebec (with occasional glances at Germany and the United States), and in the second part the means of enforcing observance of these duties.

The first part considers in successive chapters the duties of keeping within the limits of the authority conferred on the managers; of

skill and diligence in the exercise of the authority; and of integrity. These three chapters are followed by a fourth on the independence of the management, which is not at first sight a duty; while the last deals with joint responsibility for failure in any duty.

The author deserves our gratitude for having collected these duties and isolated them from other aspects of company law; but it would perhaps have added to the clarity of the exposition if he had considered in each chapter—and particularly for each decided case—to whom the duty described is owed. For example, the power of a French court winding up an insolvent company (page 62) to order directors to make good personally an insufficiency of assets due to their inefficiency reflects a duty to creditors, not to the company or to the shareholders: a corresponding duty to the company would involve the making up of assets depleted by inefficiency whether or not insufficient in a winding up. One gets the impression, perhaps unfairly, that the author is less interested in who is to be protected than in compelling management to behave itself even if the “victims” are content.

The second part opens with an important chapter on publicity, which is itself a duty of management, but is rightly placed here as being the primary means of preventing a failure of duty. The present reviewer would have welcomed a greater emphasis on the strength of the deterrent effected by outside audit, an institution which is not at home in French law. The subject is indeed dealt with, and there is a complaint that the auditors are appointed on the recommendation of the very directors whose accounts they are to audit; but is it merely an English myth that the probity of qualified auditors is wholly invulnerable to such considerations?

Three further chapters deal with inspection (by a branch of the Government); disapproval by the general meeting; and the remedies offered by the courts. Great admiration is expressed for the English Board of Trade, and it is duly pointed out that its action is in defence of private interest, and not the enforcement of any Government policy. It would have been interesting to know how the Canadian powers described on pages 182 to 184 work in practice.

This book is no pedestrian comparison of the laws which it describes. It is rather an essay on the subject illustrated from those laws. In view of their different theoretical bases (which are described in the introduction with particular emphasis on the varying degrees of obstruction to justice caused by the corporate veil) perhaps the only way in which a comparison could be fruitful is a statement, however personal, of the ends to be achieved, and a consideration of how

far each law serves each end. One is not surprised to see that some of the ends are better served by some laws and some by others. As between the laws discussed the author is completely impartial: they differ only in the degree of their inadequacy.

The common-law reader will find the manner of citing reported cases unfamiliar, but not unintelligible; and of rare misprints only one is annoying—the dropping out of footnote 83 on page 99 and its replacement by a repeat of footnote 80.

J. A. CLARENCE SMITH*

LORD READING,

By H. Montgomery Hyde; (Farrar Straus and Giroux: New York), 1967; 433 pp. and (index) 20 pp.

To trace the life of one who rose from a ship's boy "to become successively Attorney-General, Lord Chief Justice, Ambassador, Viceroy [of India] and Foreign Secretary in Britain, and the first commoner to rise to the rank of Marquess since the Duke of Wellington",¹ is a challenging task. Mr. Hyde has taken up the challenge well and given us a book which is both fascinating and thorough. The Marconi shares scandal which nearly deprived Britain of the services of both Reading and Lloyd George before their great contributions in the First World War, the political juggling of the Lord Chief Justiceship by the Prime Minister so that Reading could become Viceroy, the encounters between Reading and Woodrow Wilson, Mahatma Gandhi and Mahomed Jinnah—these are just a few of the events so well described in this biography.

Reading's life was so diverse that there is something in this book for everyone. The student of law will enjoy reading the background of some of Reading's cases which have made legal history such as *Allen v. Flood*,² *Porter v. Freudenberg*,³ and the *King v. Casement*⁴ to mention but a few; the student of international relations will be intrigued by Reading's important role in Anglo-American relations during the First World War and his part in the negotiations leading to the Treaty of Versailles; and the student of race relations will be

* Associate Professor, Faculty of Law, University of Manitoba.

1. Page 1.

2. [1898] A.C. 1.

3. [1915] 1 K.B. 857.

4. [1917] 1 K.B. 98.