BOOK REVIEWS

THE INVESTOR PAYS. By MAX LOWENTHAL. New York: ALFRED A. KNOPF, 1933. pp. 406.

It is a happy sign that lawyers are beginning to look at the creature they have evoked—the modern limited liability corporation. Economists have been hacking away at this subject for a long time and with increasing vehemence ever since the appearance of Prof. W. Z. Ripley's brilliant *Main Street and Wall Street* about eight years ago. But now the lawyer has joined in the chase. Mr. Max Lowenthal appears with a vivid and devasting attack on that most amazing of all rackets—the corporation receivership—while the lay public is still digesting the work of another lawyer—Mr. A. A. Berle's examination of the abuses of corporate finance.

We need not rush into undue optimism over this. After all, little or nothing will come of it until the bar as a whole—and not just a stray lawyer—gets pretty well soaked with the social importance of this subject. That this soaking process has not gone very far I infer from an assurance I received from the eminent head of the corporation law committee of one of our foremost charter-mongering states. He soothed me with the comforting fact that the legislature in his state would not think of making any change in its corporation laws without first having the approval of the Bar Association. When I suggested that it might be an excellent thing if the lawmakers sought the advice of at least the economists of the state, he looked at me in amazement as if I were talking a foreign language. After all, he asked, what have the economists to do with it? Is it not purely a legal question in the end? When these eminent leaders at the bar begin to realize that there are social and economic factors in the law of corporations of the first importance, we may begin to indulge the luxury of hope. Meantime, as the medical schools include a course on legal jurisprudence in their courses, would it not be well to include in all law courses at least a simple course in legal economics so that lawyers may at least start with a conception of the vast and explosive forces with which they play so blithely?

Mr. Lowenthal in his *The Investor Pays* examines the receivership of the Chicago, Milwaukee and St. Paul Railroad. This road had a capitalization of $700,000,000, operated 11,000 miles of rails and in 1924 had operating revenues of $160,000,000. The next year it was in bankruptcy. A book as long as Mr. Lowenthal's might be written in support of the Interstate Commerce Commission's findings that this great corporation was wrecked by the folly, incompetence and greed of its directors. But Mr. Lowenthal has chosen to devote his energies to the vagaries, hypocrisies, dishonesties and wastes of the receivership carried on under the aegis of a United States Court.

The book is written for the layman, but the lawyer will do well to read and ponder its lessons. When this corporation became bankrupt the fault lay clearly upon the shoulders of its managers and indirectly upon the stockholders whose agents they were. The helpless victims in such an event are the creditors and the bondholders. Whatever energy the law possesses ought to be organized, therefore, to put in possession of the property those who represent the creditor and the bondholder. As a matter of fact, in theory, the law is formed to do that very thing. And as this great railroad sinks into bankruptcy, we see an attorney for a creditor

filing suit and asking for the appointment of a receiver. A receiver is named by the court. Thereafter committees representing the various classes of bondholders are organized and the processes of the law move forward—the comedy of saving the property. What is puzzling to the layman who hears so much of the lawyer's professional emphasis upon a singleness of interest and serving one master, is to find that in all this the bankers and directors of the railroad who, on the inside of the wreck, have risen to power and possession, under cover of a collection of fictions seize the positions of all these interests and defeat the whole purpose of the law. The interests are not identical. They are indeed hostile. Yet not only do the bankers usurp the leadership of all camps, through a species of conspiracy, with the aid of reputable law firms, but the whole proceeding is perfectly obvious to the court. The court, indeed, may be said to collaborate in the validation of these fictions.

Modern life, as well as law, ancient and modern, is heavily implemented with these fictions. Often they serve as convenient and harmless lubrications for difficult passages in human relations. But they ought never be permitted to become the means of working injustices, or the tools of exploitation, whether harmful or not. The extent to which these fictions have come into use in modern corporate practice is intolerable. They are at the bottom of all the vicious banking and holding company practices under which men manage to get themselves on both sides of the counter in innumerable transactions with other people's money.

One of the most notable features of Mr. Lowenthal's book is his ruthless examination of the testimony in the various master's hearings in which the pretenses under which the bankers were enabled to stand in court for almost all the conflicting interests are coldly exposed. One sees, for instance, a great American corporation lawyer forced to asserting that at a conference at which the receivership was decided on, and at which he was engaged to put this $700,000,000 railroad into receivership, he did not know who was present or who those present represented or quite who employed him. Driven into a corner to say whom, then, he really did represent, he blurted out that he represented *the corpus,* and he seemed quite content with that.

The effect of this receivership which was so great a disaster to the railroad itself, to the investors and the public, was, of course, to rivet down the control of the bankers and to distribute some $6,000,000 in fees among the receivers and lawyers who collaborated with the bankers in carrying out their design. It brought an immense loss to the junior bondholders and when the reorganization was effected, brought about this curious result: that these bondholders were dispossessed of many millions while the stockholders—really the indirect cause of the disaster—were enabled, by putting up an assessment of four dollars a share, to salvage almost all of their losses.

The cunningly devised steps by which all this was accomplished, the pressure applied to the bondholders to bring them into line, the stratagems by which protesting interests were made helpless and voiceless, are all carefully and very often dramatically pictured by the author. Perhaps, if enough lawyers will read the book, that astounding and often tragic farce—the friendly receivership—will find its way to the scrap heap.

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