Unincorporated Associations and Business Trusts

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In Trust Estates as Business Companies the learned author, Mr. Sears, says by way of apology: "The privilege of corporate organization apparently has come to be considered either so valuable as to stand the impact of all kinds of regulation, or so defenseless against statutory purpose as to make indulgence in that regulation the sport of the legislatures. Therefore it may not be the cause of wonder that business and enterprise demanding such aggregation of means as is afforded by the ownership of shares of stock in corporations are seeking other agencies than corporations for their uses." The two standard works on what have been referred to as "The Mysterious Massachusetts Trust" have been Wrightington on Unincorporated Business Associations and Business Trusts and Sears on the Trust Estate as a Business Company.

In this second edition of Mr. Wrightington's very valuable work on the subject much modern development is shown since the date of the first edition, 1916. Not only is the situation about which Mr. Sears has spoken still present but it has become acute. Problems of taxation which seem to the business man really to be of a form of double taxation have multiplied and regulation of business has almost approached the confiscatory stage. A comparison of the cases and authorities cited by Mr. Wrightington in the first with those in the second edition shows what might be termed a wider geographical interest. Previously the standard cases were those of the English courts and the development of the doctrine in Massachusetts forced by reason of their corporation laws. Instead of being an operation of necessity it is rapidly being regarded by legal advisers to big business as one of choice if the decisions cited in the second edition are noted. The Supreme Court of the United States in Croker v. Maley, New York, Texas, Kansas and Oklahoma, the statute is given in full are cited at some length, as indicative of the present interest.

Mr. Wrightington has accomplished a much needed task in distinguishing between the association and the trust. While the line of demarcation was known, it has, previous to this work, been more or less shady. Even in Massachusetts the problem as to how much or how little control would change a so-called partnership into a trust and vice versa has never been clear. Mr. Wrightington's classification and definition of the newer word "association" as applied to these companies, not strictly trusts, clarifies the study of the cases and his treatment points out the modern tendencies.

His text follows his classification in a logical development of the subject and consists of five short chapters most copiously annotated with the more modern decisions. In his first chapter he takes up a very short historical development of the subject, his analysis classification and the modern tendencies. He then takes up Associations for Profit, Business Trusts, Unassociated Groups and Non-Profit Associations. His appendix of forms is very full and up-to-date and contains numerous clauses which have been passed upon by the courts. The treatment of the subject of Governmental Regulations is particularly clear and illustrated by many border-line cases. It is a text which should be welcomed by the bar and required for collateral reading by law students who wish to fit themselves to cope with practical problems of ever increasing interest.

John McDill Fox.