

**THE FINANCIAL POLICY OF
CORPORATIONS; IN FIVE
VOLUMES, VOLUME V, FAILURE
AND REORGANIZATION**

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The financial policy of corporations; in five volumes, Volume V, Failure and reorganization by
Arthur Stone Dewing

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THE FINANCIAL POLICY OF CORPORATIONS

By

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IN FIVE VOLUMES

VOLUME V

FAILURE AND REORGANIZATION



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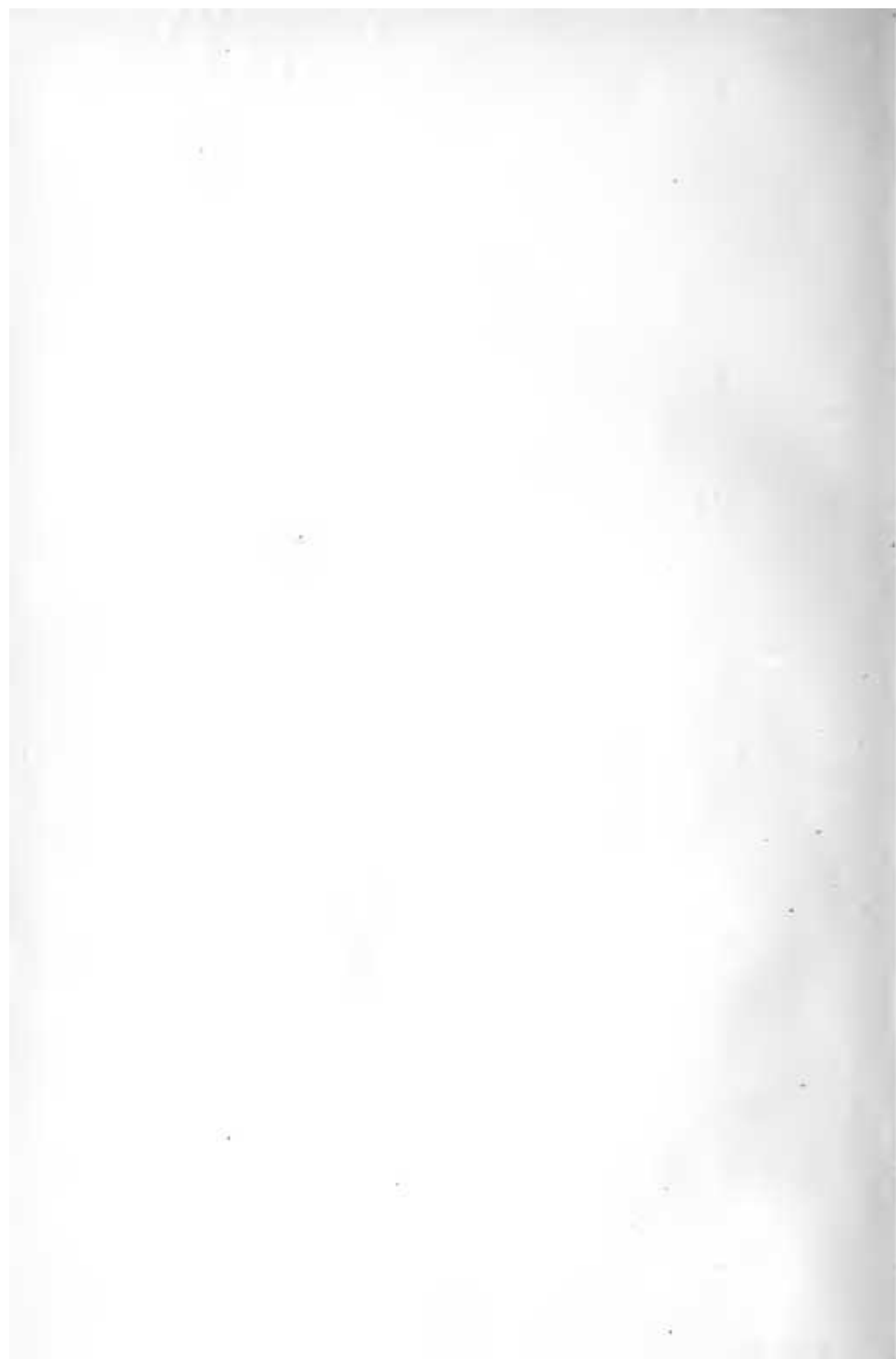
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THE FINANCIAL POLICY
OF CORPORATIONS



VOLUME V

FAILURE AND REORGANIZATION



CHAPTER I

THE PROBLEM OF REORGANIZATION

The problem stated, 3; The importance of reorganization, 5; Motive, 5; Difficulty of definition, 7; Two stages in reorganization, 8.

When a corporation fails or becomes embarrassed, its financial plan is usually remolded. This is reorganization. It is a redrawing of the financial plan, but with a view to contraction, not to expansion.¹ Whether the new plan provides for contraction or expansion, new money is required, but an expanding and profitable business may ordinarily solicit new capital on the basis of its past success, whereas a bankrupt business secures capital only through coercion. Unwillingly its security holders add more money merely to save that already invested. So easy is it to obtain money for the expansion of a successful business by one of several ways, that the question is merely one of financial expediency; so difficult is it, on the other hand, to obtain the money necessary to reorganize an unsuccessful corporation, that the success of the reorganization depends primarily on selecting that plan which shall achieve this one end with the least friction.

Owing to the delicacy of the situation and the judgment required, corporate reorganization is the most intricate phase

¹ In this volume the term "reorganization" does not include those corporate changes which result from governmental suit brought under the Sherman Act of 1890, or the English common law of restraint of trade. Nor does it include those reorganizing changes resulting from the union of a group of successful or partially successful competitive units into a single organization. If cases arise that make it necessary to use the term in a significance that includes any such instances, the fact will be clearly indicated.

of the whole field of finance, and the one in which generalizations and precedents are least significant. It is a subject which has as its elements a mass of conflicting legal precedents, the makeshifts of mere temporary expedients, and, permeating the whole, the psychological bias and prejudices of thousands of dissatisfied human beings whose interests are in fundamental conflict. The primary purpose of every reorganization is justice to all concerned. But the justice is tempered—*one might almost say obscured*—by motives of expediency. Compulsion is exerted at one or more points. This requires the arm of the law; yet the whole subject is so new that there are few laws to cover it² and very frequently a state statute may be in direct conflict with an otherwise expedient reorganization.³ Moreover, even when the statutory law presents no difficulties, there are always conflicting precedents and legal opinions.⁴ In addition to the legal aids and impediments, there are important financial questions of mere judgment—the ease with which an underwriting may be obtained, to what extent the stockholders may be counted on to add money, what may be the opportunity for selling bonds during the first year of the new company's life. In answering these questions in any one particular case, precedents are of little value. Each reorganization is different from all that have occurred before in one or more important respects. And some particular may be such as to require that a plan, otherwise practical, be set aside. The only general principles, therefore, that one can formulate are at most approximate summaries having little more than an historical significance.⁵

²Some states have special laws affecting reorganizations, notably New York, Michigan, Pennsylvania, New Hampshire, and West Virginia.

³Thus Texas had a law permitting purchasers of railroads to form one corporation to take over all the assets, claims, and the like of another. (Revised Statutes, Sec. 4359.) The old Houston and Texas Central Railway was sold in two parcels and thus disintegrated into two railways. The law required one corporation for successor, and as here were two, the law had to be changed to meet the difficulty.

⁴Notably in the claims of the merchandise creditors that can be placed ahead of the claims of the holders of funded debt. See Chapter V, page 97.

⁵The ablest practical master of reorganizations we have ever had remarked: "You may deduce rules of law easily enough, but it is not as easy to deduce