

**BUSINESS TRUSTS AS
SUBSTITUTES FOR BUSINESS
CORPORATIONS: A PAPER READ
BEFORE THE KANSAS CITY BAR
ASSOCIATION, APRIL 10, 1920**

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Business Trusts as Substitutes for Business Corporations: A Paper Read before the Kansas City Bar Association, April 10, 1920 by Guy A. Thompson

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GUY A. THOMPSON

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as Substitutes for

Business Corporations

A paper read before the Kansas
City Bar Association, April 10, 1920

By
GUY A. THOMPSON, Esq.
Of the St. Louis Bar

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L. WADE CHILDRRESS
AS A SLIGHT TESTIMONIAL TO HIS
STERLING CHARACTER AND THE
ESTEEM IN WHICH I HOLD
HIS FRIENDSHIP

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YVARELI OSOWATZ

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PREFACE.

Something more than a year ago it became necessary for me, in the discharge of my professional duties, to consider the proposed employment of the express trust as a vehicle of trade. Interest thus aroused has since led me to read as widely on the subject as opportunity permitted. I learned that the attention of lawyers generally was being directed to this subject. Accordingly when, recently, I accepted an invitation to address the Bar Association of Kansas City, no subject seemed to be more opportune for discussion—certainly none, appropriate for such an occasion, in which I personally felt a keener interest. The subjoined production was the result. There was no thought of publication in its preparation, but merely, within the necessarily restricted limits of such a paper, to select for discussion those phases of the subject which seemed both interesting and fundamental. Since its delivery, members of the Bar, whose judgment I value, have advised that it be published, and so numerous are the requests received for copies that I have consented to its publication. I have done this with some hesitation, for it is not, and in the nature of things could not have been, a comprehensive treatise. On the contrary, many of the important aspects of the subject were of necessity eliminated from consideration. Such, for example, as the duties of the trustees, their right of indemnity, their liability to the *cestuis*, action by and against the trustees, theory and extent of creditors' rights against the trustees and against the trust estate, inviolability of the trust fund, seeking direction of the Chancellor, etc. With this foreword of explanation I submit the pages that follow in the hope that they may be of interest and possibly of service to my brethren of the Bar.

GUY A. THOMPSON.

St. Louis, Mo., May 1, 1920.

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STATISTICAL LIBRARY

BUSINESS TRUSTS AS SUBSTITUTES FOR BUSINESS CORPORATIONS

THE BUSINESS CORPORATION

§ 1. **Its Rapid Growth:** The most remarkable fact of all commercial history is the business corporation. Remarkable not only because of the economic and social part it has played, but remarkable also because of the rapidity and magnitude of its growth. With approximate accuracy it may be said that the business corporation is the product of the past seventy years.

As late as 1775, so eminent an authority as Adam Smith wrote: "The only trades which it seems possible for a joint stock company to carry on successfully without an exclusive privilege are those of which all the operations are capable of being reduced to what is called a routine, or to such a uniformity of method as admits of little or no variation. Of this kind is, first, the banking trade; secondly, the trade of insurance from fire, and from sea risk and capture in time of war; thirdly, the trade of making and maintaining a navigable cut or canal; and, fourthly, the similar trade of bringing water for the supply of a great city."¹

There is authoritative warrant for the statement that up to the year 1800 there were not to exceed one hundred private corporations in the entire United States, that one-half of these were in Massachusetts

¹ Wealth of Nations, Vol. 2, Book 5, Part 2, p. 242.

and that the enterprises carried on by them were banking, turnpike roads, toll bridges, canals, and, to a very limited extent, manufacturing.²

Giving attention to our own State of Missouri, it may be noted that during our territorial days but two private corporations were created and both of those were banks, namely: The Bank of St. Louis in 1813 and the Bank of Missouri in 1817. From Missouri's admission to the sisterhood of States in 1821, to the year 1850, while a number of academies, colleges and seminaries, turnpike road, insurance and railroad companies, and a few bridge and bank companies were incorporated, yet it is unlikely that more than fifty companies were granted charters which now would incorporate under the manufacturing and business act.

The first English text upon corporations, Kyd, was published in 1793 and dealt exclusively with municipal corporations. The first American text, that of Angel and Ames, appeared in 1831, and gave scant treatment to business corporations. Indeed, it may be said that corporate literature and the business corporation as it exists today virtually begin with the year 1850.

And yet in 1918 there were in the United States at least 350,000 business corporations with gross incomes of \$79,500,000,000, net incomes of \$10,730,000,000, paying to the Federal Government alone in income taxes for the year 1917, \$2,142,000,000.³

§ 2. **Reasons for Delay in Development:** Without doubt their growth was retarded until this late date first because of the difficulty and expense attendant

² Williston, Law of Business Corporations, 2 H. L. R. 105, 149.

³ Statistics of Income, Treas. Dept. 1919.

upon the securing of corporate charters and, secondly, because the necessities of commerce were served with measurable adequacy by the ordinary partnership, and quasi-partnership,—the joint stock company.

In England only the Crown and the Parliament could grant corporate charters and not until 1862 was the English Company's act adopted,⁴ called by Sir Francis Palmer, the "Magna Charter of Co-operative Enterprises." In our country it was necessary to obtain corporate charters by special acts of the legislatures. Excepting perhaps a half dozen states, we find no general incorporation acts till toward the middle of the last century.⁵ In Missouri the first general corporation act for business companies was enacted in 1849,⁶ and not until 1865 was the creation of corporations by special acts of the legislatures prohibited by constitutional provision.⁷

During the early part of the last century the field of commercial enterprise was held by the ordinary partnership practically alone. But, the increase in population, the constantly growing settlements by the pioneers of new territory, the discovery of vast natural resources, the multiplication and complexity of human needs and wants, the progress of inventions and particularly the advent of steam, proved that the partnership was an agency utterly inadequate to commercial necessities. It was inadequate chiefly because of the unlimited liability of its members, for this made it im-

⁴ 25 and 26 Vict. C. 89.

⁵ First general incorporation acts for manufacturing companies were N. Y. 1811, Mass. 1836, Mich. and Conn. 1837, and Ind. 1838.

⁶ Laws 1849, page 18; Laws 1864, page 20; R. S. 1865, Chapter 39, 387.

⁷ Art. VIII, Sec. 4.