

**ACCOUNTS OF
EXECUTORS AND
TESTAMENTARY TRUSTEES**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649344871

Accounts of Executors and Testamentary Trustees by Joseph Hardcastle

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JOSEPH HARDCASTLE

**ACCOUNTS OF
EXECUTORS AND
TESTAMENTARY TRUSTEES**

Studies in Business

First Series, No. 2.

ACCOUNTS OF EXECUTORS AND TESTAMENTARY
TRUSTEES: LECTURES BEFORE THE NEW YORK UNIVER-
SITY SCHOOL OF COMMERCE, ACCOUNTS AND FINANCE

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PUBLICATIONS OF THE NEW YORK UNIVERSITY SCHOOL
OF COMMERCE, ACCOUNTS AND FINANCE, NEW YORK, 1908.

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PREFACE.

This book has been written primarily for the aid of students. It gives in substance the matter which I present in a course of lectures at the New York University School of Commerce, Accounts and Finance. For the students who hear these lectures it will serve as a syllabus. The book, however, is more than a syllabus, and the general reader will, I trust, find it a source of independent help and guidance in his study of the subject. I have aimed to make it useful, not only to the teacher, but also to the professional accountant.

The book has the following objects in view:

1. To bring the lawyer and the accountant into accord on the subject, so that they may profitably co-operate in their mutual work.
2. To give the accountant such a knowledge of both the principles and practice of the law that he may do his work intelligently, leaving, however, the legal guidance, the procedure, and the forms to be attended to by the lawyer.
3. To bring out prominently the distinction between corpus and income.
4. To interpret mathematically sundry decisions of the courts.

It has not been thought advisable to include the "sale of real estate for payment of debts," since that subject pertains to the surrogate.

With respect to the law portion, it is more a compilation than an original work, as I deem it better to give it in approved competent language than to give it less effectively in my own phraseology. The chief sources on which I have depended are, the Code of Civil Procedure of the State of New York, and "Chaplin on Express Trusts and Powers," with the kind consent of the author of this latter work.

It must not be thought that this treatise will be of use only in the State of New York, for the general principles of the law are applicable throughout the United States.

JOSEPH HARDCASTLE, C. P. A.

New York City, October 28, 1903.

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ACCOUNTS OF EXECUTORS AND TESTAMENTARY TRUSTEES.

LECTURE I.

CLASSES OF BUSINESS AND THEIR CONTRAST.

So far as Accounting is concerned, business can be divided into two great classes:—

1. Businesses which belong to proprietors and are managed by proprietors or by persons appointed by the proprietors for the proprietors' benefit.

2. Businesses in which there is inability on the part of the proprietors, and others are chosen, either by the proprietors themselves or by competent authority as substitutes for the proprietors, to transact the business in the place of the proprietors.

The subject matter with which the proprietors are concerned embraces real and personal property (either one or both), such as is capable of valuation.

The value is expressible in money.

Such businesses are organized, as to ownership, into the following kinds:

1. Under a sole proprietor.
2. Under general partners.
3. Under special partners, or under both general and special.
4. Under a joint stock ownership.

The subject matter of a business under the control of proprietors is called their assets, and is expressed in money.

The obligations under which proprietors are placed and which arise out of the business are called the liabilities. These also are expressed in money. In order to bring out clearly the two great classes of businesses and consequently to contrast them, we will explain the theory on which each of them is founded, as originating in the law.

- (A) BUSINESSES IN WHICH THE PROPRIETORS ARE PERSONS
(NATURAL OR ARTIFICIAL) WHO ARE CAPABLE OF
CONDUCTING BUSINESSES.

The Personalistic Theory.

According to the personalistic theory, accounts are divided into three great classes, according to the three classes of people heading the accounts. The first class are correspondent accounts; the second, custodian accounts; and the third, proprietor accounts. Correspondents are all those persons who are juristically liable to the proprietor or to the administrator of the business for an existing debt; they are his true debtors, the payment of whose debts the proprietor or administrator can enforce by law. Correspondents likewise comprehend all those persons who can juristically enforce the payment of the debts which the proprietor owes to them. The latter debts constitute the true liabilities of the proprietor. These juristic accounts, accounts of true debtors and true creditors, comprise not only open accounts with persons, but include all those debits and credits of persons towards the proprietor not indeed headed with the name of persons, but nevertheless debits and credits of persons toward the proprietor supported by documentary evidence, such as bills receivable and bills payable, and mortgages receivable and mortgages payable, debits and credits which have taken the accounts out of the open accounts, and placed them under other categories. It is not our business here to give the subdivision of the only class of accounts which are truly debtors and truly creditors of the proprietor. The creditors are the true and only liabilities of the proprietor, while the debtors represent the only persons who have liabilities toward the proprietor. This term liabilities is used in the strict sense of claims which can be enforced by the law.

We come now to the second, or custodian, class of accounts. A custodian is one who is trusted with the care of property for another; he is a trustee. He is called by various names, according to the class of property he has in his charge. One who has the custody of cash is called a cashier; one who has the control over cash, a treasurer; one who has the charge of property, a storekeeper, or some other equally significant name.

The proprietor may be his own custodian, in which case there are two personalities joined in one. All assets not included under the correspondent class belong to the custodian class. The name of custodian heading each account has been gradually dropped, and only the kind of property over which he is custodian remains. Instead of putting Custodian of Merchandise as the heading of an account, we simply say, Merchandise, and instead of saying Custodian of Cash or Treasurer, we simply say Cash.

The word "debtor" of the correspondent class, meaning one under liability, has been ideologically applied to the custodian class; i. e., the use of the word has been extended to the custodian class, with an entirely altered meaning. It no longer implies a liability, but simply a responsibility or accountability for the goods entrusted to the custodian's charge; if they disappear he must be able to tell why they disappear, and show that it is through no fault of his own. The word "creditor" is also ideologically transferred to this class of accounts, with the meaning that the custodian is freed from his responsibility.

In all accounting in which the proprietor or owner is not the central figure, trusteeship prevails, and the ideas of the custodian class of accounts are dominant. The Merchandise account is the typical account of this class. The custodian is debited, in the altered sense, with what he had on hand at the beginning, with what he has received, and with all increase in value, under the name of profit; then he is credited with all he has parted with, and with any decrease in value or loss; and finally he is credited with what he has on hand at the true accounting. As the trustee has had a limited right of ownership conferred upon him, and as he is also custodian of the fund in his charge, consisting of all his assets in his dual capacity of custodian and trustee, he debits or charges himself with the fund, with all additions thereto, and with all profits; he credits himself with all transfers of property to others, with all losses, and finally with what he has on hand.

As to the third class of accounts, proprietor accounts, they represent the accounts of the proprietor as capitalist. The capital fund with which they begin is the excess of assets over liabilities or the proprietor's equity in the business. The pro-