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COMPANY LAW. By R.P. Maheshwari and S.N. Maheshwari. 1972. National Publishing House, Delhi. Pp. xvi+453. Rs. 16.50.

THE BOOK under review is written by two members of Shri Ram College of Commerce, Delhi, whose association with the college, whether as lecturers, readers or professors is, however, not given. The title page shows that they have also written other books, two of which as given there are : *Mercantile Law* and *Business Law*, their Hindi versions being *Vyāpārik Sanniyam* and *Vānijya Vidhi*. The present book *Company Law* is their next contribution to the study of the various branches of mercantile law. Their justification for this contribution is shown by a statement in the preface. It reads :

> This Textbook on Company Law has been written primarily to cater to the needs of the students preparing the subject for various degree and professional examinations.

Company law has assumed great importance over the years. Its growing importance is largely due to the fact that it deals with an economic institution which has revolutionalised not only the organisation of production of goods and services, but also the very concept of private property and has thereby become a great instrument of social manipulation.[1] The magic touch of incorporation at once converts private property into public property and puts it under the control of the rules and regulations of the Companies Act which have been designed not merely to protect investors but also the interest of the general public.[2] A growing and living subject is naturally bound to attract the attention of a growing number of authors. Whereas formerly there used to be no book on company law beyond Shah's *Lectures on Compny Law* now there are about a dozen contributions to the study of this subject. The present book is a happy addition to the family of books on the subject.

The book is addressed to students. To the administrator of a company nothing is more important than the regulations he has to follow in the actual administration. But to the student, it is not the regulation but the principle behind the regulation which is more important. The principles of company law are somewhat different and somewhat above the mass of regulatory provisions of the Companies Act. For example, there is no mention in the whole of the Act of the doctrines of *ultra vires*, constructive

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1. This has been amply demonstrated by A.A. Berle and G.C. Means' outstanding work of the century, *Modern Corporation and Private Property* (1968) and more recently by W. Friedmann, *The State and the Rule of Law in a Mixed Economy* (T.L.L. 1971).

2. The extent to which public interest plays its part in the regulatory provisions of the Companies Act is shown by D.L. Mazumdar, *Towards a Philosophy of the Modern Corporation* (1967).

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notice and indoor management. These are the outcome of judicial legislation. Similarly, the directors' fiduciary obligations, their powers being regarded as powers in trust,[3] their liabilities and disabilities, the rule in *Foss* v. *Harbottle*,[4] principles relating to conservation of capital and payment of dividends, to mention only a few, owe their origin not to the statute but to the great masters of the subject on the Bench like Lord Cairns and Lord Lindley and Justice Romer. The present book, being primarily meant for students, is presented in the form of underlying principles as opposed to commentaries on the regulatory provisions of the Act.

What is new in the book ? Going through the pages one does not find anything, except, perhaps, the twenty seven item list of the criminal sanctions of the Act, which appears at pages 274–276. The list is useful, though incomplete.[5] Not even the arrangement of the chapters or of their contents seems to be original. The learned writers themselves confess in their preface : "We acknowledge with gratitude to the various learned authors on the subject, on whose writings we have copiously drawn." Those authors are not mentioned. The passages, almost at the wholesale level, reproduced from their works, are not duly acknowledged. There is a reference to Shah at one place and to Gower at one or two places. Facts of cases and even headings seem to have been picked up from other works in great haste and, therefore, they could not be properly placed in the statement of the text. One result of this unseemly haste is that at many places facts and decisions of cases are given, but not their names or citations. At other places, if the name of a case is given, the citation is missing or only the citation is given and the name is missing.[6] For the same reason certain unmeaning statements have crept in. They occur at the following pages : page 46, "It is to be noted that company member and every person dealing with the company shall be bound by the provisions of the Memorandum." Here the words "company member" are not understandable. Probably they mean "members of a company". Page 82, "A person dealing with the company may very well assume that the Articles registered have been duly adopted by the company...." The word "adopted" here is, perhaps, used to mean that "the company has followed its articles". There are some inaccuracies also. At pages 7-8 it is stated that "Restrictions imposed by the Articles on the absolute right of the members to transfer shares shall be void." It is a commonplace of company law, as recognised by the Supreme Court in *Bajaj Auto Ltd.* v. *Firodia*,[7] and in section 82 of the Act,

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3. A.A. Berle, Corporate Powers as Powers in Trust, 44 *Harv. L. R.* 1049; Joseph L. Weiner, The Berle-Dodd Dialogue on the Concept of the Corporation, 64 *Col. L. R.* 1458 (1964).

4. (1843) 2 Hare 461; 67 E.R. 189.

5. There are 190 offences under the Act. See Tahir Mahmood, Offences under the Companies Act and the Doctrine of *Mens rea* 2 *Comp. L.J.* 25 (1969).

6. Such omissions occur at pp. 54, 79, 105, 138, 209, 264 and 393.

7. (1970) 2 S.C.C. 550.

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that the right to transfer shares is not an "absolute right" but can be restricted both by public and private companies through their articles. The statement is also contradictory to the learned writers' own submission at page 145 that "Directors are within their competence to refuse transfer subject to the authority given to them by the Company's Articles." At page 45 it is stated that the memorandum "is the fundamental and unalterable law of the company." How can the memorandum be described as unalterable ? The learned authors themselves explain at page 52 the alteration of memorandum. While justifying the statement of objects at page 49 the learned authors say that it ensures that "the funds raised by one undertaking are not going to be risked in another." The objects clause was intended to prevent diversion of funds to objects not included in the objects clause and not that there was any risk of the funds being transferred to another undertaking. In explaining the distinction between memorandum and articles at pages 80-81 it is stated that :

> Though both are public documents, yet Memorandum defines the relation between the company and the outsiders, while the Articles regulate the relation between the company and the members....

This is obviously not so. Both the memorandum and articles affect outsiders with notice of their contents and there is no difference in this respect. At page 98 it is stated that a "contract made with a company to purchase shares is a *uberrimae fedei* contract." The purchaser of shares is under no obligation to disclose any facts. It is only the company. But even in the case of the company no case and no law has so far laid down that in the matter of sale of shares it is bound by the principle of *uberrimae fides*. All that the law prevents is "misrepresentation." It does not cast a duty of absolute good faith. The authors' own statements at page 107 show that a misrepresentation, which should not have influenced a prudent investor, creates no liability. A contract of good faith, on the other hand, requires every fact to be disclosed whether material or not. The learned authors state at page 145 that the directors "are acting within their powers when they refuse to register the name of a person as a shareholder of the company, whom they consider to be of a doubtful character." One wonders if the learned authors have come across any articles of association in which words like "doubtful character" are used. The language used is definitely much more polite. Moreover, the directors do not have a general power of refusing a "doubtful character." They can only proceed in terms of the company's articles.

The book carries no chapter by the name "Prospectus." Going through the table of contents one does not come to know where "prospectus" is

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8. (1971) 3 W.L.R. 440; (1971) 3 All E.R. 16 (C.A).

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dealt with. One has to find it out frcm the index that it is considered with "commencement of business."

While explaining the position of the company secretary, the learned authors could have greatly benefited by consulting the recent decision of the Court of Appeal in England in *Panorma Developments* (*Guildford*) v. *Fidelis Furnishing Fabrics*,[8] where a company has been held liable for the hire of taxies engaged by the secretary from the office of the company but for his personal purposes. The contribution of Lord Denning, M.R., has been considerably appreciated in the Cambridge Law Journal of the year. The result of this decision is that a modern company secretary is not a mere clerk, but an officer of the company with extensive duties and responsibilities and has authority to enter into a wide range of contracts connected with the administrative side of the company's affairs. In that respect his position has altered very materially since the 19th century.

This degree of close examination of the contribution of learned authors is not intended to minimise their effort or to discourage them, but only a piece of humble advice that intellectual labour should, perhaps, be a little more honest.

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