

Rate Making for Common Carriers (Book Review)

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BOOK REVIEWS

Editor—WARREN E. COLLINS

RATE MAKING FOR COMMON CARRIERS. By J. Haden Aldredge. Montgomery, Ala.: The Harrison Company, 1929, pp. 201.

The title of this volume is not entirely accurate since the book contains no discussion of rate making for street railways, steamship companies, pipe lines, and some other kinds of common carriers that occupy an important place in our economic structure. More properly the title should be "Rate Making for Common Carriers Subject to the Interstate Commerce Act," both because it is only these carriers that are dealt with and because the discussion is largely confined to the methods and principles of rate regulation applied by the Interstate Commerce Commission.

When one considers the long and varied history of railroad and public utility developments in this country, it is obvious that a book whose text embraces but 181 pages can present but a summary treatment of the subject. This volume contains an ingeniously arranged outline of the topics dealt with rather than an exhaustive treatment of them. It possesses the virtues of clarity and simplicity; its chief fault is a tendency to over-simplification.

The first two-thirds of the book deal with the construction and regulation of railroad freight rates. Underlying the problem of railroad rates are such questions as due process of law under the Constitution, fair return, and valuation, which, however, absorb less of the routine activities of the various regulatory bodies than do questions which are less fundamental but which more directly and immediately concern the shippers, the travelers, and the carriers themselves. For, unlike a public utility such as a light, power or water company having a fixed plant, producing and marketing one commodity, and with costs of reproduction and operation which are determinable with a fair degree of accuracy, a railroad secures its revenues from the sale both of passenger transportation and of freight transportation of thousands of different articles upon which, because of various factors, economic and otherwise, different freight rates must be charged.

The problem of regulating railroad rates is further complicated by the fact that the railroad rate fabric has not been created as a whole but has grown up with the growth of railroads and with the industrial and social expansion of the country and is interwoven therewith. As it exists today it is the result of bargaining between shippers and carriers, of competitive influences, of guess-work, of modifications upward or downward by the various Commissions for more or less scientific reasons. This historical background cannot be disregarded. To deal with a rate structure thus created by the application of any fixed rules or *a priori* principles is as obviously impossible as it would be undesirable. As the author rightly says:

"There is no mathematical formula for making rates. It is an economic subject of great complexity and can not be reduced to the

simple terms of a precise formula. If it were possible to devise a formula, it is certain that a rate structure constructed in accordance therewith would be entirely too rigid and inelastic to meet the necessities of business and commerce."

In the course of the Interstate Commerce Commission's forty years of regulating railroad rates, however, there have been developed various so-called "principles" in accordance with which the Commission has acted and which are discussed from time to time in its reports. To a considerable extent these "principles" are little more than conventions, tacitly agreed to by all concerned, in accordance with which certain facts are accepted as indicating the reasonableness or unreasonableness of rates. Whether these facts actually prove that certain rates are reasonable or unreasonable is open to question. But most of the "principles" have some economic foundation, and the adjustment of rates in accordance with them has seemed substantially to meet the economic needs of the public and the railroads.

After two introductory chapters defining the terms used and briefly outlining the history of the pertinent Federal legislation, the book here reviewed contains a summary of these various "principles" and their application. Here the author has ably reduced his subject to its lowest common denominator, and his pages represent a generally accurate resumé of the views expressed and applied by the Commission. The conciseness of his treatment, however, inevitably involves some inaccuracies, omissions, and an occasional misbalancing.

Thus it is believed that his treatment of valuation in rate making is somewhat more dogmatic than the present state of the law on this question justifies. Again, in connection with his statement that the law was not designed to equalize fortunes, opportunities or ability, in support of which he cites the decision of the Supreme Court in *Interstate Commerce Commission v. Diffebaugh*, 222 U. S. 42, 56 L. Ed. 83, he fails to refer to the so-called Hoch-Smith Resolution (later cited, however, in another connection), by which some contend that Congress has tried to change the law so that it will do this very thing. And the author devotes but two short paragraphs to the subject of comparisons of rates with other rates as proof of reasonableness or unreasonableness, although, since the chief function of the Commission in dealing with individual rates is a fair adjustment of the rates of one shipper to those of other shippers, rate comparisons have come to be perhaps the most common form of testing the reasonableness of rates or of prescribing new rates. It would seem that a somewhat fuller discussion of this one factor would have added to the usefulness of the book.

The concluding chapters of the book relate to passenger transportation, express rates, telephone and telegraph rates, and motor vehicle transportation. These present problems quite different from railroad freight rates, as the author has pointed out. His discussion of these subjects, however, is even more brief than that of freight rates. So far as it goes it is clear and to the point.

On the whole it may be said that to one who accepts the book as merely suggestive of the matters to be dealt with in the regulation of common carriers

subject to the Interstate Commerce Act it will prove useful. A person entirely unfamiliar with the subject will find in it interesting information, stated in simple terms, as to the way in which rates are made. To one who turns to the book for education in the subject for the purpose of applying his knowledge in his business, the book will prove useful if it indicates to him the complicated character of the problem which he is approaching and the need for deeper research, but will prove dangerous if he looks upon it as a complete statement of the law and the economic principles governing his business.

The bibliography at the end of the volume would be more complete had the author referred, in addition to the books mentioned, to such leading authorities on the subject as "Railroad Rates—Services—Management" by Vanderblue and Burgess; "Railroad Rate Regulation" by Beale and Wyman; "Wyman on Public Service Corporations"; and "Fuller on the Interstate Commerce Act."

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CLARK ON RECEIVERS, 2nd Ed. By Ralph E. Clarke. Cincinnati: The W. H. Andersen Co., 1930, Vols. 2.

The subject of this review comes to us, in the language of its preface, as a treatise. Surely, a treatise on any branch of the law is always a "consummation devoutly to be wished." Opinion, however, will differ on the definition or description of a treatise. Unseemly as it would be here to dilate on what a treatise is or is not, it may not be amiss to present a triple classification of texts, which has seemed satisfactory, at least to the reviewer.

In the first group would be placed the efforts of those self-styled treatise-writers, whose labors have resulted in nothing more than a summation and sometimes an elaboration of what has been more succinctly and accurately stated in *corpus juris*. While the writings of the prolific authors of this group are over-crowding the shelves of our law libraries, the justification for their existence must be traced in a great measure to the commercial aspirations of their authors and publishers.

In the second group is the treatise. Here, the primary aim is not compilation, not enumeration, not specialization in the commercial sense. The purpose, on the other hand, is solution, comparison in the broadest sense, and finally what Judge Cardozo has described as the reconciliation of the irreconcilable, the merger of antithesis, the synthesis of opposites. Here is the alpha and omega of legal research, here is something more far-reaching than law itself,—here is life. In this group are found our Willistons and our Wigmores.

The third group is not a compromise between the first and second. It is rather a distinctive species which is the product of the evolution of law and business. Its aim is both scientific and efficient. It recognizes the colossal bulk of the law and the intricate ramifications of but one of its branches. It sees the bewilderment of the practitioner as he plods from book to book, preparing his case in one phase of the law. Finally, it tries to help him by compiling in one or two volumes the known substantive and adjective law on a specific topic.