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Cases on Public Utilities (Book Review)

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BOOK REVIEWS

CASES ON PUBLIC UTILITIES. By Young B. Smith and Noel T. Dowling, including **CASES AND READINGS ON RATES**, by Robert L. Hale, St. Paul: West Publishing Co., 1926, pp. 1190.

The success of the case method of legal instruction has been due in large measure to the ability of Langdell's faculty at Harvard to compile case books. Those who as students had the pleasure of using Ames' "Cases on Trusts" did not require the aid of a text-book, and saw their instruction carried on in the class-room without periodical summations. During the last ten years, however, there has been a wholesale output of case-books by compilers who insert a few cases haphazard fashion, under the many subdivisions of the subject, and then feel convinced that they have constructed a worthy case-book.

It is still the aim of great teachers of law who use the case method to proceed in their work without suggesting to their students the supposed benefits to be derived from text-book study, and without grotesquely mingling with the case method of instruction the lecture system of the earlier period. Yet, at times, the task of teaching properly becomes extremely difficult; for compilers oftentimes proceed without any definite objective and without either sequence or coherence regarding the ultimate purpose of the study. It becomes virtually a necessity in using the case method to lean heavily on the lecture for logical reinforcement of the chief conclusions.

Within recent years, in the whole field of legal study only two compilations of extraordinary merit have been brought to the attention of the reviewer. Of these, the reviewer inclines to put the compilation of Professors Smith, Dowling and Hale as ranking first in the order of achievement.

The book can be divided into two parts. The first, covering about two-thirds of the content, treats the subjects of regulation and control of business, of supervision of public utilities, of service and liability. As part of the study of the regulation and control of business, the scope of regulatory statutes is considered; and as part of the subject of the supervision of public utilities the cases on labor relations are included.

The second part of the compilation deals with the subject of rates: their judicial review, fair valuation of property, proper rate of return, current expenses, division of joint rates, effect of rate reduction on net earnings, income from particular branches of the service, and finally the right to recapture excess earnings in order to subsidize deficiency earning corporations. Reproduction cost is treated both as a subject bearing on the fair value of property and also from the standpoint of yielding a fair rate of return as a means of attracting outside capital. Incredible as it may seem, there is no other compilation except the one now under review which includes a study of these important cases.

Professor Hale does not attempt to present the complicated subject of rate-making by means of selected cases alone. He recognizes that the political opinion of individual judges is not to be found in the ultimate decision of the court and that only in part, if at all, is such discussion contained in the judicial opinion. This gap is crossed by selections from articles and by copious footnotes. The omission of the decisions of the Interstate Commerce Com-

mission in other compilations on this subject would indicate that they have often been regarded as unworthy of study. The railroad bar, however, would probably hold that the rulings of the Interstate Commerce Commission affect the conduct and administration of the railroads as intimately as the decisions of the Supreme Court.

The student of this subject knows that the nine personalities of the Supreme Court have never been blended into a single unit of thought reactions and he likewise should know that the members of the Interstate Commerce Commission do not represent a unified principle of judgment. In fact, Commissioner Eastman often speaks a language that some of the others on the Commission regard as incompatible with economic stability. These individual reactions to the diverse situations, the student will find indicated for his benefit by groups of quotations, references, and cross-references; and these in turn lead to a thorough understanding of the human motivation in the reasoning of these fact finders, who in reality are law declarants.

The compilation emphasizes its presentation of important decisions by allowing them to appear under various interrelated aspects of the subject. For instance, the Dayton-Goose Creek case is cited, with discussion in a footnote under confiscatory rates, and this is followed by a masterful analysis of the same case under a later subdivision, "Recapturing the Surplus and Subsidizing the Deficiency."

In conclusion, it seems to the reviewer that the chapter on "Fair Value," consisting of only 99 pages, merits and compels recognition as a great accomplishment in legal literature.

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HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie. St. Paul: West Publishing Co., 1928. pp. 950.

Writers on legal subjects and professors of law have generally treated with well-bred indifference the so-called "Hornbook Series." Perhaps it has seemed to them that they were entirely too easy to read to possess any real merit as law books. The most recent addition to this series, Professor Dobie's work on Federal Procedure, while fully as readable as the other volumes, should also dispel any doubt as to the usefulness of these books, both to the student of law and to the practitioner.

This volume on Federal Jurisdiction and Procedure is especially timely in view of the Act of Congress of February 13, 1925, which made sweeping changes in this branch of the law and renders it necessary to use with caution the standard works on Federal Procedure written prior to the enactment of this statute. Professor Dobie's work contains a thorough analysis of the purpose and effect of this statute.

It would be difficult to find a more rational discussion of the troublesome question of Federal jurisdiction in *habeas corpus* cases than is contained in this treatise. The alleged abuse of this writ by the Federal Courts, "under which the judgments of the highest courts of the states are sometimes subjected to reversal by the lowest courts of the United States," is sanely discussed by Professor Dobie and the conclusion reached that, notwithstanding the possibility of such abuse, the writ of *habeas corpus* has, in the hands of