

5-1927

Case Books on Public Utilities

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Recommended Citation

Field, Oliver P. (1927) "Case Books on Public Utilities," *Indiana Law Journal*: Vol. 2: Iss. 8, Article 6.

Available at: <http://www.repository.law.indiana.edu/ilj/vol2/iss8/6>

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CASE BOOKS ON PUBLIC UTILITIES*

The appearance of these two casebooks on Public Utilities in the same year has been hailed by several reviewers as an event of considerable significance in the development of the teaching of this subject. The development of this course through its various stages from Bailments and Carriers to the modern law school course on Public Utilities has been the subject of extended comment. The two books naturally provoke comparison and it is usual to review them together.

Mr. Robinson's book is about one thousand pages in length. Mr. Robinson has, however, inserted many very long notes so that perhaps one page in four or five is not case teaching material, in the sense in which that term is understood at present. The result is that the actual number of pages in Mr. Robinson's book devoted to the presentation of cases is approximately 850 pages. For purposes of convenience the sections of the two books dealing with Rates may be considered separately. If the material on rates in Mr. Robinson's book is deducted there remain less than 700 pages devoted to the subject of Public Utilities for classroom teaching purposes. The Smith, Dowling, and Hale book contains 943 pages of case material exclusive of rates. It is, therefore, a much larger book and it is to be expected that it would contain more formal case material than Mr. Robinson's book.

The subject of Public Utilities is one the boundaries of which are neither well fixed nor clearly delimited at the present time. It is a field of the law in which classification schemes are constantly being changed. But there are some topics which seem likely to remain basic for some time at least. It may be of interest to compare the materials of the two books with reference

*Cases and Authorities on Public Utilities. Edited by G. H. Robinson. Chicago: Callaghan & Company. 1926. pp. 976. Price \$6.00.

Cases on the Law of Public Utilities. Selected and Annotated by Young B. Smith and Noel T. Dowling, including Cases and Readings on Rates Selected and Arranged by Robert L. Hale. St. Paul: West Publishing Company. 1926. pp. 1258. Price \$6.00.

to these few topics or subjects. By the way of preface it should be said that both books are constructed on the assumption that some form of governmental regulation is likely to remain a constant factor in the Public Utility field.

On the general subject of Regulation and Supervision by courts, legislatures, and constitutions the book by Smith and Dowland contains 312 pages. Chapters 12, 12 and 13 in Mr. Robinson's book deal with these same problems. In addition, about 100 pages in the first chapters of Mr. Robinson's book should be classified under this heading. A total of about 225 pages in the Robinson book deals with Regulation and Supervision.

Mr. Robinson has included no separate chapter on Liability while a very long chapter on this subject has been included in the other book, approximately 350 pages. On the general subject of Service Chapters 4, 8, and 9 of Mr. Robinson's book contain a little over 300 pages and the Smith and Dowling book a little less than 300 pages.

Smith and Dowling's book, therefore, contains more material on most of these subjects than the book by Mr. Robinson. Some reviewers have considered Mr. Robinson's casebook a daring and new attempt at the presentation of the subject of Public Utilities, thinking mostly in terms of the chapter headings. But upon reflection chapter headings seem a rather unsatisfactory test. One real test is how much teachable material on each subject to be treated is included in each work? A second consideration is as to how the material presented is organized? A third question to be asked is, has the material been properly apportioned among the various subjects? An examination of the two books has led the reviewer to the belief that Mr. Robinson's book raises very few problems not also projected by the other book. There are several problems raised in the notes in Smith and Dowling's book not touched at all by Mr. Robinson's book. Mr. Robinson's arrangement of the material is somewhat novel and it may be that it is an improvement over the conventional presentation followed by Smith and Dowling. But it is a grave error to think that Mr. Robinson's book contains more modern material than the Smith and Dowling book. The modern material dealing with modern problems is about the same in each work. Smith and Dowling's work contains some historical material; Mr. Robinson's book contains practically none. But the historical material in Smith and Dowling is to be considered as *in addition* to the material found in Mr. Robinson's work, because of the greater length of the former work. The reviewer is quite sure that the problems of Public Utilities are essentially modern, but he is also convinced that they cannot be approached in entire ignorance of the history out of which these problems arose, and of the body of law which existed as the basis for present rules and balances when modern conditions arose. Mr. Robinson gives the student virtually nothing of this in his book. Many might quarrel with giving too much. But something certainly should be given. It is after all a problem of emphasis. No emphasis would seem to be too little emphasis.

The modern law of public utilities is a distant cousin to the old Public Callings but it is nevertheless of the same blood, even if statutes be the growing source of law in this field. Both books are based on sound principles when they emphasize the modern aspect of Utility problems. It is very odd that in a book so modern in arrangement and approach such as Mr. Robinson's chapter headings *The Inn* and *The Carrier* should be found. Mr. Robinson treats these separately, as though they had no connection with the rest of the material. Chapter 16 seems particularly indefensible to the reviewer, dealing with Sleeping Car Companies and Telegraph Companies.

The notes contained in these two books present a marked contrast. The notes in Smith and Dowling are only aids, and strictly subordinate and collateral to the case material. They are aimed to present problems suggested by the cases included. Mr. Robinson's notes are very elaborate. At times they are commentaries on the state of the law on the subjects touched upon in the cases. They seem designed to perform the function of the teacher in some instances and save him the trouble of summarizing the law. If this results in saving time for critical analysis of cases and problems, it is well. Mr. Robinson's notes may be helpful to the teacher as sources of information, but it is questionable whether students derive any real benefit from them. Classroom experience with case books containing notes of this type has led the reviewer to believe that they help the students very little, and that they can never be exhaustive enough to be of real help to the teacher. They are too long for the student, too brief for the teacher. The reviewer cannot but believe that an additional problem might better be raised by the insertion of an additional case in the space taken up by many of these notes.

The material on the two works dealing with Rates has been excluded from this discussion thus far. Mr. Robinson devotes 162 pages to the subject of Rates. Mr. Hale, in the Smith and Dowling work devotes approximately 250 pages to this subject. The compilation of cases and readings on this topic by Mr. Hale is a superlative piece of work. Two criticisms might be made of Mr. Hale's work, the footnotes are perhaps too long, and the subject is perhaps too minutely subdivided for the student. But the material is abundant for a separate course on Rates. Mr. Robinson's material does not aim to accomplish the full treatment given the subject by Mr. Hale.

The extension of the field of Public Utility law in the next few years is apparently to be accomplished by legislation. The legislatures rather than the courts have extended the field to its present status in the last quarter century. Every state has on its statute books a large number of statutory provisions dealing with Public Utilities. In view of this fact the reviewer believes that the usefulness of casebooks in Public Utilities could be very considerably increased if sample statutes were inserted in appropriate places throughout the book, somewhat after the model of some Negotiable Instruments casebooks. Statutes differ much less than one would think, despite the fact of forty-nine jurisdic-

tions. Statutes are usually of types, and where there is no particular type which has thus far been widely adopted the two or three types which are found could well be used. This would add very few pages to the casebook, perhaps not more than twenty-five or thirty at the most. It would serve to fix in the mind of the student the statutory basis for much of the modern law of Public Utilities and would also call attention to the various types of statutory provisions which are to be considered and evaluated in the light of experience and discussion.

Both books are to be commended for the use which they make of commission cases. More liberal use of this material might well be made in the future. The great outstanding merit of Mr. Robinson's work is the tremendous number of Law Review articles on Public Utilities cited, both in appropriate places throughout the book and in a separate list. Mr. Robinson also gives a list of books on Public Utilities. The books are physically well done; each containing a table of cases and elaborate index. It is to be hoped that more time can be given to the subject of Public Utilities in law schools. Almost every village, city, county, or state's attorney or counsel encounters utility problems. The private practitioner also has a growing amount of this type of business. Either of these books furnishes material well adapted to a course longer than the traditional two-hour one.

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