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A Selection of Cases under the Interstate Commerce Act, by Felix Frankfurter (1922)

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BOOK REVIEWS

A SELECTION OF CASES UNDER THE INTERSTATE COMMERCE ACT. By Felix Frankfurter, Byrne Professor of Administrative Law in Harvard University. Second Edition. Cambridge: Harvard University Press, 1922, pp. 789.

The cases submitted cover, (I) Scope of Commerce Regulated by the Act, (II) Duties of Carriers Under the Act; (III) The Functions of the Interstate Commerce Commission in the Enforcement of the Act; (IV) Function of Courts in the Enforcement of the Act.

This is a series of well-selected cases covering court interpretations and Interstate Commerce Commission rulings covering thirty years of procedure under the Interstate Commerce Act. The first case quoted in point of time, that of the *Interstate Commerce Commission v. Baltimore & Ohio Ry. Co.*, bears the date of 1892; the last one given is *Railroad Commission of Wisconsin et al v. C. B. & Q. Ry. Co.*, and came up in 1922.

Professor Frankfurter, in a note to the second edition of this case book, in justification of the timeliness and value of a work of this kind, says:

"According to authoritative estimates the volume of interstate traffic in the United States is about three-fourths of the whole. This means that about three-quarters of the country's transportation business, not to mention other vast interstate utilities, such as the telegraph, the express service, the pipe lines, are subject to the control of governmental regulation. Ample *a priori* justification would thus exist for systematic study according to proved methods of legal education, of that body of law through which this governmental control is exercised."

In further justification for any well-organized contribution to the subject of federal regulation of transportation, it may be added that it is now practically determined that when the physical valuation of the railroads of the country authorized by Congress in 1913 is completed, the figures will stand at between twenty-three and twenty-five billions. The federal legislation relating to this vast aggregation of the nation's wealth is to be found today in a brief act known as the Esch-Cummins Law, or the Transportation Act of 1920. Even if our national legislators were qualified to do so, such an act would be too unwieldy if administrative details and provision against all probable contingencies were incorporated. It would also be impossible of enactment in view of the practical necessity for compromise characteristic of all great Congressional legislation. Interpretation, elucidation and amplification must necessarily be left to courts and commissions. Such is the history of all great pieces of legislation of this character.

The Interstate Commerce Act passed in 1887 was the beginning of an attempt to put into practice a long-foreseen necessity for subjecting the rail carriers to a thoroughgoing regulation of their interstate traffic. As might have been anticipated, the Act of 1887 did not stand the test of court analysis. Principally as the result of some far-reaching decisions of the Supreme Court and the demands of a restive and energetic President for "some teeth in the law," this initial attempt at regulation of the carriers was materially modified by the passage of the Hepburn Act in 1906. Further important modifications came in 1910 through the Mann-Elkins Act, followed by miscellaneous transportation legislation including the Valuation Act of March 1, 1913, the Panama Canal Act of July 1, 1914, and the Clayton Act of October 10, 1914.

The period of government operation, the authority for which was embodied in the Federal Control Act of March 28, 1918, continued to March 1, 1920. From this last date to the present, all past legislation regulating interstate commerce which stood the test of time and which accorded with the best judgment of Congress at the close of the period of governmental operation, was collected into one great statute, the letter of which has remained undisturbed for five years.

The student, however, who relies upon the letter of the Transportation

Act of 1920 for a knowledge of the practical status of present day interstate commerce regulation, or who accepts as gospel the statements of text books written soon after the passage of this act, will find himself out of touch with the real situation at many points. For example, the ruling of the Interstate Commerce Commission in the case known as the *Wisconsin Passenger Fares*, and the decision of Chief Justice Taft upholding the contention of the Commission, brought about a sweeping revision of the views previously generally accepted as to the power of individual states to control commerce within their borders. Had this case been decided a little earlier it would also have caused the author to enlarge an estimate made in his preface to the second edition. This decision, rendered in 1923, was placed in the appendix of this collection of cases, probably delaying the publication of the work several weeks. It suggests the probable advisability of further editions of this or similar works and the wisdom on the part of the student of keeping an eye on the decisions of the Commission and the Court if he would keep his knowledge of transportation problems up to date.

A further advantage to students of railroad transportation to be gained through the publication of well-selected case books from time to time is evidenced by the clear presentation of facts and the cogent reasoning of such justices as Holmes, Hughes, Taft and others. A comparison with the language used by certain text book writers in essaying to clear up complex transportation problems suggests at least that some of the learned justices deprived the teaching profession of valuable material by entering the legal profession. Possibly one of the causes of this exceptional clearness is the fact that the justices are not writing Doctors' theses or text books with a view to promotion.

In the Frankfurter selection of cases but little, if any, fault can be found. In some instances there is a condensation or omission of immaterial points, which is an advantage to both teacher and student and does not err seriously, if at all, on the side of completeness. Since the decision of a majority of the Court is law, it is a question whether the inclusion of dissenting opinions has a distinct advantage. This is an open question, and it is quite probable that lawyers will not agree that the practice brings any confusion a trained mind would find difficulty in overcoming. In any event, the dissenting opinions in the few cases in which they are given are brief and do not detract seriously from the value of the work to a teacher of transportation.

C. R. ATKINSON.

CASES ON TAXATION. By Joseph H. Beale. Cambridge: Harvard University Press, 1924. pp. viii, 367.

This collection of cases was published by Dr. Beale in July, 1924. The cases are collected under subjects.

The first chapter treats of taxes on persons; who may be taxed by the taxing power; the various kinds of personal taxes, such as poll tax, road tax, school tax, tax on corporations as such, as distinguished from property and franchise tax.

Chapter II collects the cases on property, dividing them by reference to real property and to personal property. The former illustrates what may, under proper statutes, be taxed as real estate, such as mortgages on land, rights-of-way and other interests less than the fee, water power used in connection with land, also the right of an owner to offset an indebtedness secured by an incumbrance on the land, in arriving at its value for tax purposes.

Section II of this chapter treats of personal property showing what may be taxed under this head, giving a number of the leading cases, illustrating the right of a taxing power to levy a tax on intangible property, such as notes, stocks, bonds, etc., where the owners have their domiciles in foreign jurisdictions and the debtor or person issuing the instruments evidencing the obligations is domiciled or situated within the jurisdiction of the taxing power. The cases show the application of the maxim, "*Mobilia Peronam Sequuntur*," the modification of the maxim, and the cases refusing to apply the maxim. This section includes cases showing the various methods adopted for taxing the