

Michigan Law Review

Volume 12 | Issue 3

1914

Book Reviews

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Recommended Citation

John B. Waite, Hester E. Yntema, Victor H. Lane & Edwin C. Goddard, *Book Reviews*, 12 MICH. L. REV. 242 (1914).

Available at: <https://repository.law.umich.edu/mlr/vol12/iss3/6>

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BOOK REVIEWS.

REGULATION, VALUATION AND DEPRECIATION OF PUBLIC UTILITIES. By Samuel S. Wyer, M. E., Consulting Engineer, Columbus, Ohio. Columbus: The Sears & Simpson Company, 1913. pp. 313.

When the Supreme Court of the United States modified the doctrine of *Munn v. Illinois*, by holding that, although the fixing of rates was a legislative function, it was a judicial matter to pass upon their reasonableness, it is doubtful if anyone realized the nature and extent of the undertaking upon which the courts were about to enter. Judicial machinery, in many ways, is unfitted to deal with the administrative and engineering problems that have arisen with a rapidity and a complexity that could scarcely have been anticipated. The result has been a union of the work of the engineer and the lawyer, which has required on the part of the engineer a legal knowledge, and on the part of the lawyer an engineering knowledge, of at least the fundamentals of all the complicated problems that have been involved in the valuation of our immense public utilities, and in the determining of whether current rates would yield a proper return upon the value of the plant. It is still and always will be necessary in questions of this kind for the expert engineer and the expert lawyer to work together, but neither can understandingly work together without such a general knowledge of the other's field.

This is well brought out in Mr. Wyer's book, which is written primarily from the point of view of the engineer, but which has to make use of a great number of legal decisions, in the main from the Supreme Court of the United States, but to a less extent from various other federal courts and from a considerable proportion of the courts of the several states. The point of view of the book is perhaps best given in the author's own language. "This book is not a partisan appeal for the rights either of the Public or the Public Utilities. Rather it is an unbiased discussion and concise compilation of the pertinent economic, engineering and legal facts relating to both. My aim is to establish a code for both, rather than an ex parte argument for either interest. The book is limited to the discussion of basic principles. Therefore, no reference is made to the kaleidoscopic and ephemeral regulation enactments of the different States and Municipalities. Neither can blanket rules be given that blindly applied—without expert legal or engineering knowledge of the local conditions—as a test for the cost of Utility service or regulation standards in any given case. My own argument is fortified with numerous digested opinions of experts and judicial decisions, many of the latter being from the United States Supreme Court."

This purpose the author has so well carried out that the book will be of real value to every lawyer engaged in a case involving the question of public utilities. It is also doubtless of value to engineers as a pocket hand-book, full of useful matter, but somewhat elementary from the engineering point of view.

The book covers the definitions, economics, public control and protec-

tion of public utilities; depreciation, valuation, and engineering data necessary in determining questions of regulation and valuation of such utilities; and finally a chapter of valuable reference data, mostly engineering, and an extended selected bibliography,—engineering, economic, and legal, including such contributions as the valuable paper before the American Society of Civil Engineers (Transactions, Vol. 72, p. 1), by Professor Henry Earl Riggs, of the Engineering Department of the University of Michigan. The work contains numerous cuts and tables, illustrating especially the effects of various kinds of depreciation, and the engineering and economic problems involved in the construction and operation of public works.

The law to be found in the book is too meager to be of any particular value to a lawyer, but the engineering information he can understand and needs, and this covers the greater part of the work. If any criticism is to be made, it might be urged that the legal side of the question is rather briefly treated even for the engineer, but it is certainly a valuable reference hand-book from his point of view, and, in any case, he will have to rely largely upon the lawyer for legal matters, just as the lawyer must rely upon the expert engineer for engineering knowledge.

The book is printed on very thin paper, and is well bound in leather, so that it is in convenient form for use as a hand or pocket book. E. C. G.

BOOTH ON STREET RAILWAYS, Second Edition, by Isaac C. Sutton and Paul H. Denniston, of the Philadelphia Bar. Philadelphia: T. & J. W. Johnson Co., 1911. pp. cxi, 922.

If to the writer of olden time it seemed that to the making of books there was no end, we may add at the present time that to the size of law books there seems to be no end. When Story wrote his classical work on Bailments and Carriers, the first on the subject, he gave a small portion of the closing part of the book to carriers. Even the early editions of the next classic, Hutchinson on Carriers, were all one volume editions, but it has now stretched out to three volumes. Meantime, more than twenty years ago, Mr. Booth regarded the subject of street railway law as important enough to justify separate treatment. The present work is a second edition, and although it has extended from the 749, xvii, pages of the first edition, to the 922, cxi, pages of the present, the editors are to be commended for their restraint in keeping the work within a single volume. The additional matter is due in part to a very large increase in the notes and citations of cases (The first edition cited about 1,400 and the second cites something like 2,500), but there is also a considerable expansion of the text, and a whole new chapter in addition on interurban railways, a subject which had hardly made its appearance at all when the first edition was printed.

Many of the changes in the text illustrate how the mechanics of street railways as well as the law, have been developing in the last twenty years. For example, in the first edition, the street railway is defined as one in which "cars are propelled by animal or other power." The second edition has this,—one in which "cars are propelled by electrical or other power." In the first

edition under, "Who May Acquire the Right," the right is usually conferred on corporations, but often on natural persons. Under the same title in the second, it is said that the right is usually conferred upon corporations, but often upon natural persons, or upon municipal corporations. Changes are especially noticeable in such parts of the work as chapter six, "Electric Street Railways." At the time of the first edition electricity was so promising as to "render it highly probable that it will soon be the most common motive power in use." Railways of this class are still upon the threshold of the prolonged litigation through which every new use of the public thoroughfares must pass. In the new edition, electricity is so efficient "as to make it the most common motive power in use" and "railways of this class were long engaged in protracted litigation through which every new use of the public thoroughfares must pass....the law has now largely been settled both by statute and decision."

The first edition was long the standard work on the special subject of street railways. The new edition has retained the desirable features and the excellencies of the old and has brought the work down to the present. While the book no longer has the field to itself, it will no doubt, in this new form, retain its position as an important reference text on the law of street railways, embracing as it does a treatment of urban, suburban and interurban, surface, subsurface and elevated railways, whether operated by animal power, electricity, cable, or steam motor.

E. C. G.

HANDBOOK ON THE LAW OF JUDICIAL PRECEDENTS OR THE SCIENCE OF CASE LAW.
By Henry Campbell Black, St. Paul: West Publishing Company, 1912.
pp. xv 768.

In view of the present widespread interest in the general question of the efficiency of the courts, and in view of the further fact that there is a disposition, manifest in some quarters at least, to attribute the claimed lack of efficiency to the conservatism of both bench and bar, their unwillingness to adjust themselves to what may be called the "changing order," the publication of Mr. Black's book is timely.

The task the author set for himself was "to write a real and complete treatise on the science of case law at once theoretical and practical." One may not be entirely clear as to the author's idea of a "real" treatise as distinguished from some other sort of treatise, but our admiration is compelled for the courage of one who claims "completeness" in this day for his book on any topic of the law.

We are persuaded, however, that our author has come nearer the accomplishment of the appalling task set before him than any predecessor in this general field, and has given to the profession a very useful book.

There are portions of the work, notably some parts involving more particularly the historical and theoretical phases of the general subject, which may have been as well done before.

The discussion of the questions as to the authority of precedents as between the courts of the same and different states, and between the different

State courts and the Federal courts is well elaborated upon authority ample in citation.

The author disclaims any contention that his citation of authorities is exhaustive, but his claim to have "gathered together a number of examples great enough to serve all the purposes of a practical exposition of the subject and to supply the student with pertinent and useful citations" is well justified.

V. H. L.

THE PANAMA CANAL, CONFLICT BETWEEN GREAT BRITAIN AND THE UNITED STATES OF AMERICA. By L. Oppenheim, M.A., LL.D., Whewell Professor of International Law in the University of Cambridge. Cambridge: Cambridge University Press, second edition, 1913, vi, 57.

This short study, whose timeliness is attested by the fact that a second edition has already been called for, comes from the hand of a leading English authority on international law and constitutes perhaps the clearest statement of the British position in the controversy concerning the Panama Canal. In the large, it is a criticism of the memorandum which President Taft appended to the Panama Canal Act upon giving it his signature. After a preliminary consideration of Article III of the Hay-Pauncefote Treaty, which is the chief bone of contention, the author proceeds to show that a construction of that article as a declaration on the part of the United States to grant "a conditional favoured-nation treatment" to all nations is in conflict with the historical facts lying back of the treaty in question and with the "general principle of neutralization," enunciated by the Clayton-Bulwer Treaty and reaffirmed by the Hay-Pauncefote Treaty. Attention is further drawn to the "unheard-of extension" of the term, "coasting-trade," by the United States, and it is intimated that any exemption in favor of this trade would for this reason result in a discrimination against the vessels of other nations.

Evidently the crux of the whole controversy lies in the fact that the United States has acquired "dominium" as well as "imperium" over the Panama Canal Zone,—a contingency which is not explicitly provided for by the Hay-Pauncefote Treaty. It is perhaps in view of this fact that some American writers have found it rather difficult to understand quite clearly why the United States, in virtue of its internal sovereignty, is not to grant subsidies to its own vessels, by exemption from Canal tolls as well as otherwise, provided that the proportionate tolls upon the vessels of other nations are not thereby increased. This, baldly stated, is the British attitude. It is to be hoped that, as Oppenheim suggests, the difference may be submitted to arbitration as the most fitting method of solution, if diplomacy fails.

H. E. Y.

THE LAW OF COMMERCIAL EXCHANGES. By Chester Arthur Legg. Baker, Voorhis and Company, New York, 1913, pp. xxxiv, 381.

The ordinary legal practitioner would hardly have supposed that there was, today in the world of substantive law an unplowed part large enough to constitute a field of itself. Yet Mr. Legg has produced a book of nearly 400 pages on a branch of the law which appears not heretofore to have been the subject

of a text-book. Nor does the author seem to have padded his material for the purpose of filling a volume. His work is a comprehensive but exclusive discussion of the powers, duties and liabilities of "Commercial Exchanges," as associations of individuals, whether incorporated or otherwise, in relation to their own members, the public, and the State.

Coming just when there is a renewal of agitation for the enforced incorporation of the New York Stock Exchange, its subject might be particularly timely. It does not, however, deal at all with the laws and regulations which particular exchanges have put into effect, or even as generally existing, but only with the rules which they *may* impose; and while it has some discussion of the responsibility of the exchange to the State, it does not devote any space to treatment of the power of the State to make rules and regulations actively controlling the conduct of exchanges and their members. In consequence, it is of interest only to those who are in some way immediately concerned with the exchanges or affected by their regulations. As such persons are for the most part not lawyers, the author has, as he says, endeavored to avoid purely technical discussion and legal formulae so far as possible without injuring the book as primarily a legal treatise. The reviewer does not believe that legal writing, reasonably used, has a technical terminology or abstruse diction of its own, but, at any rate, the author has succeeded in putting his subject in a form that will not strain the comprehension of his readers, be they lay or legal.

The book has an historical introduction concerning the development of Commercial Exchanges which, though brief, is extremely interesting. Beyond that, it will be of interest only to those directly concerned with the rights and rules which such associations may enforce.

J. B. W.