

examination stimulated by a deep respect and confidence in the capacity of the Supreme Court of the United States and the fact that Congress made a long and careful study of the purposes involved before enacting the Valuation Act and the Transportation Act (p. 13).

The actual study is compressed into sixty pages of very readable type. The author gives some history of section 15A of the Transportation Act of 1920. He then devotes a few pages each to some of the valuation theories announced by the Supreme Court, or some of its members, and concludes that Congress thus committed to the Commission the task of ascertaining the prudent investment reasonably necessary to produce the service rendered in fact, the determination of what percentage thereof constitutes a fair return, and the prescription of rates adequate to produce such return (p. 71).

The discussion of cases is not at all comprehensive and not entirely accurate. A reference to the discussion of the *O'Fallon* case¹ will suffice here. This case is discussed on about half a page (pp. 28-29) and is considered as settling the legislative intent as to valuation. In the opinion of the reviewer, the valuation question and all its problems are far from settled. Except for *Smyth v. Ames*² (the full citation of which is nowhere given in the monograph) the valuation cases have not been depression cases. It is possible that the present depression may give us some light on the Supreme Court's viewpoint in such times. Until then we will not begin to understand the reaction of the Supreme judicial mind on the valuation problem, and it may be that motor busses and revived water transportation may serve to so complicate matters that we will never have the Supreme Court sufficiently informed to be willing to lay down any definite rules (if that is desirable), apparently much sought after by the Interstate Commerce Commission and the lawyers.

The valuation theories discussed in the book show none too complete a comprehension of the many economic factors and the conflicting economic and social interests involved. The author seems to say, very wisely, that what the Supreme Court demands of the Commission is a sound business judgment, but he does not seem to comprehend the assertion he makes when he tries to determine definite rules by which to arrive at such judgment.

To sum up, the book may safely be read by the student beginning a course in public utilities or administrative law, but it is valueless to the mature student or practitioner. Even for the beginner it will serve only to suggest some of the problems and not to solve them.

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CASES ON THE LAW OF MUNICIPAL CORPORATIONS. By Charles W. Tooke. 1931 edition. Chicago: Commerce Clearing House, Inc., 1931. Pp. xiii, 896.

This 1931 edition of Professor Tooke's casebook on municipal corporations is in plan and approach much like his popular first edition. Recent ferment in legal ideas has worked but few changes. The book is still dedicated to a search for fundamental principles, and cases are again, for the most part, clustered about legal concepts rather than situations of fact. Annotation of a useful kind is scant. Little non-legal material is included. There is here, as there

1. 279 U. S. 461.

2. 169 U. S. 466.

was in the earlier edition, an excellent example of what an able editor can do in what some now choose to call the old tradition. Traces of a functional approach are rare.

Modern scepticism about the existence or utility of legal principles has left Professor Tooke untouched. He aspired in his first edition to present cases and topics in that sequence which would "best serve to develop the underlying principles" of his subject. This later volume is offered because a rapidly expanding "law of municipal corporations" has brought about a "wealth of new decisions applying the fundamental principles of local government" to "new conditions." One wonders just what Professor Tooke can mean by these statements. Is he suggesting that there are certain permanent principles of the law of municipal corporations? If so, what are they? Who made them principles? Principles for whom? For what? Do they remain the same principles even when expanded to take in new situations? Why a new edition in 1931 if the fundamental principles were known in 1926?

This mystical approach has affected the organization of the book. Professor Tooke makes but few concessions to the new fashion of grouping materials about problems of fact rather than concepts of "the law." His first inquiry is how a municipal corporation can be differentiated from all other legal concepts. Students must be made to know its "Definition and Nature." But, oddly enough, a number of cases are set out in the chapter under this title which show that there are all sorts of governmental units now performing functions of local government. Other significant chapter and section headings are: "Creation, Corporate Changes and Dissolution," "De Facto Corporations," "Powers," "Delegation," "Nature and Construction," "The Police Power," "In General" (referring to police power), "Power to Contract," "Liability in Quasi-Contract," "Property Rights," and "Relative to Public or Private Functions." Yet this is not a complete index. Some concessions are made. There are chapters and sections which place more emphasis on problems than on concepts. Examples are: "Special Services," "Municipal Revenue," "Municipal Indebtedness," and "Relative to Streets and Highways." Much repetition results from the use of these two bases of organization. Students meet the same problem on more than one occasion and wonder why they must thresh it through again.

There is another approach. Many legal scholars today do not believe that the application of old principles to new facts is quite so simple a process as that of pouring new wine into old bottles. They prefer accurate observation of immediate social phenomena to a quest for the eternal. Legal concepts they recognize as mere devices for the attainment of social ends. Hence, their emphasis in organization, when they edit casebooks, is on problems. They do not offer concatenations of rules, principles, and concepts which are to be taught as if entities existing for the sake of pure being. Such hot pursuit of the Holy Grail no longer interests them. They group their materials about troublesome situations which arise in actual life. Their aim is to indicate, as far as possible, all the many factors which may, or should, affect a determination of the legal significance of such situations.

An approach of this kind demands that there be presented to students much more than what formerly passed for law. It has, therefore, in recent years become the style for casebooks to appear in full dress. Skeletons of cases are clothed in "extra-legal" material,

law journal citations, critical comments, and thought-stirring questions. Such annotation is of great service to both students and instructors. There is little of it in Professor Tooke's book. Many of his cases, to be sure, are decorated with citations to other jurisdictions, and there are some scattered references to legal periodicals and other sources, but the bare (conceptual) bones of the course still stick out. When in the company of some of the best modern case-books, a book like this must be much embarrassed. Yet there was a superabundance of material which might have been used.

These comments are not intended to suggest that there is not much of merit in the book. They are made from a point of view which many do not share. Some, if not all, of the characteristics which have been described here as defects may well appear to others as virtues. There is, further, much about the book which is commendable from any point of view. Many law teachers regarded the earlier edition as the most serviceable volume in its field. This edition they should find even more useful. Professor Tooke has carried out his revision with the care which one might expect of a recognized scholar. By reducing the size of the book almost a third he has made it far more adaptable to law school use. Yet he has managed to introduce a number of very recent cases which are used to advantage. He has also made in the arrangement of cases and sections quite a few alterations which were prompted by classroom experience.¹ Perhaps it is not too much to say that his book, with all of its conceptualism, is still our best casebook on local government.

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HANDBOOK OF THE LAW OF SALES. By Lawrence Vold. St. Paul: West Publishing Co., 1931. Pp. ix, 623.

The law of sales presented in brief text form from a thoroughly modern business point of view. This perhaps is the outstanding reaction which one experiences in reading Professor Vold's recently published "Handbook of the Law of Sales."

The book clearly is the product of one who not only has considered both the statutes and decisions in the sales field, but also has tied in the law of sales with the whole marketing function. In this respect Vold does for the sales textbook what Professor Llewellyn did for the sales casebook. With the viewpoint of both men the reviewer is in hearty accord.

This union of law and economics, of judicial rules and business practice, is emphasized at the very outset of the book. The opening sentence of Chapter I, which is entitled "The Functional Perspective for the Law of Sales", reads:

"The function of sales transactions in the economic life of the general population is to serve as one of the most important steps in the process of distributing goods from original producer to ultimate consumer for the satisfaction of human wants. . . . The most insistent human wants, such as wants based on needs for food, clothing, shelter, and tools and equipment for earning a living, as well as wants based on desires for conveniences and luxuries, require for their satisfaction the exchange of goods from one set of producers to another."

Thus Vold admits frankly the vast change in perspective toward legal problems which has developed since Tiffany published the second edition of his *Hornbook on Sales* in 1908.

1. These are outlined in a favorable review in (1932) 45 Harv. L. Rev. 1129.