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These courts have held that such a proceeding would be contrary to public policy in that it would be detrimental to the integrity of the home, break the home ties, open the doors of the courts for actions by intractable children. Therefore, the recent North Carolina decision in allowing the child of divorced parents to sue for support sets a new landmark.¹⁸ Would not public policy be best subserved by following this decision and awarding relief to the child? This is the most direct means of enforcing the parent's obligation. Such an action would not be detrimental to the integrity of the home as the home has already been disrupted by divorce, separation or abandonment.

WILLIAM THORNTON WHITSETT.

Public Utilities—Public Service Commissions—Power to Require Extensions—Dedication of Property by Public Utilities.

Pursuant to a joint resolution of the Senate and House,¹ the Georgia Public Service Commission ordered the Georgia Power Co. to supply the town of Andersonville with electricity. The Power Co. obtained an injunction against the enforcement of the order, and the Commission appealed to the Georgia Supreme Court. Judgment was reversed and the injunction dissolved. It appears from the facts that the Power Co., operating under a general charter right to supply electricity to cities and towns throughout the state, had obtained franchises to serve several cities around Andersonville, the nearest being about ten miles away, and that its transmission lines ran within

sented by a guardian *ad litem*. The Court, speaking through Mr. Justice Brandeis, held that the appearance of both parents in the Georgia divorce action gave that court complete jurisdiction over the marriage status and, as an incident, power to determine the extent of the father's obligation to support the child, though the child was residing in another state when the divorce judgment was entered. The Court held the Georgia decree binding on other states because of the full faith and credit clause. U. S. CONST. ART. IV, §1. Mr. Justice Stone, dissenting, contended that it should be no answer to this suit by the child that at some earlier time some provision for it had been made which was no longer available or adequate. He believed that the Georgia court had tied its own hands and its own policy, but should not at the same time be permitted to prescribe that policy for other states in which the child might happen to live. *Hansberger v. Hansberger*, 185 S. E. 810 (Ga. 1936); *Bedrick v. Bedrick*, 151 Misc. 4, 270 N. Y. Supp. 566 (1933) (parents separated but not by legal decree); *Baker v. Baker*, 169 Tenn. 589, 89 S. W. (2d) 763 (1935).

¹⁸ *Singleton v. Singleton*, 217 Ky. 38, 288 S. W. 1029 (1926) (demurrer to divorced mother's plea for additional allowance for children sustained. Children intervened and their plea for additional allowance granted); *Barrett v. Barrett*, 39 P. (2d) 621 (Ariz. 1934) (knowledge of child that divorce decree had awarded custody of children to mother and imposed the duty of support upon her held not to deprive child of right to maintain his action against the father for reimbursement for necessities furnished by him when the mother was incapable of supporting the children).

¹ Georgia Acts of 1935, p. 1248. It was not contended that this resolution enlarged in any way the powers of the Commission.

sixty-nine feet of the city limits of Andersonville. The city had applied for service and had offered the Power Co. an exclusive franchise. Although a showing was made of the costs of extending the service and the expected revenue, the company based its case not upon unreasonableness of the order,² but upon the proposition that its charter right imposed no duty to serve, and therefore the Commission's order amounted to a taking of property without due process of law. The court, however, held that the statute giving the Commission power to "require . . . public service companies under its supervision to establish and maintain such public services and facilities as may be reasonable and just"³ was broad enough to include extensions into new territory within that covered by the charter right, and that the exercise of this power was not unconstitutional because the Power Co. had impliedly dedicated its property to the service of Andersonville in that its existing services and lines were so close by.⁴

This holding presents two fundamental questions. First, under such a statute can a public service commission require any reasonable and profitable extension within the charter right territory?⁵ Second, can there be a dedication of property to the public service in any part of the charter right territory other than by an actual entering of the region in question? Much confusion exists in the law on these propositions. The court in the instant case cited as authority for the proposition that extensions into new territory may be ordered cases dealing with discontinuance of existing services,⁶ and with discrimination between customers⁷ without due regard for their exact holdings. Another distinction which should be made is between the present case and those concerning extensions ordered within the corporate limits of a city or town from which the utility has accepted an exclusive franchise. By accepting the franchise the utility pre-empted the territory and binds itself to supply

² Where the order is unreasonable and confiscatory in that the revenues will not be sufficient to pay a fair return on the investment, the courts are in accord that relief will be granted. *Marr v. City of Glendale*, 40 Cal. App. 748, 181 Pac. 671 (1919); *Public Service Comm. of Md. v. Brooklyn and Curtis Bay Light and Water Co.*, 122 Md. 612, 90 Atl. 89 (1914); *Ladner v. Miss. Public Utilities Co.*, 158 Miss. 678, 131 S. E. 78 (1930).

³ GEORGIA CODE (1933) §§93-307.

⁴ *Georgia Public Service Comm. v. Georgia Power Co.*, 186 S. E. 839 (Ga., 1936).

⁵ No case was found requiring extensions beyond the charter or franchise limits.

⁶ *Atlantic Coast Line Railroad Co. v. N. C. Corp. Comm.*, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 398 (1907); *N. C. Public Service Co. v. So. Power Co.*, 263 U. S. 508, 44 Sup. Ct. 164, 68 L. ed. 413 (1924) *aff'g* 282 Fed. 837 (1922); *Salisbury and Spencer Ry. Co. v. So. Power Co.*, 179 N. C. 18, 101 S. E. 593 (1919).

⁷ *N. C. Public Service Co. v. So. Power Co.*, 263 U. S. 508, 44 Sup. Ct. 164, 68 L. ed. 413 (1924); *Smith v. Ky. Utilities Co.*, 233 Ky. 68, 24 S. W. (2d) 928 (1930); *Salisbury and Spencer Ry. Co. v. So. Power Co.*, 179 N. C. 18, 101 S. E. 593 (1919).

all parts of the city subject, as usual, to the tests of reasonableness and profitableness. The Supreme Court of the United States has twice held such an order constitutional.⁸ But these cases are not authority where a general charter right covering a large area is involved, and the question remains whether accepting such a charter right alone imposes a duty to serve.

Cases directly on this point are remarkably few. In *Interstate Commerce Commission v. Oregon-Washington Railroad and Navigation Co.*⁹ the Supreme Court held that the I. C. C. could not require a railroad to build a line through new territory connecting existing lines. In so holding the court said: "Much is made of the circumstance that, when the complaint was filed, the company had a charter under which it was authorized to build a line on the location of that which the order describes. The possession of the franchise¹⁰ is said to give rise to an implied agreement to serve the district. . . . But authority to build the line if the company were so minded, involved no commitment to construct it. Though by appropriate legislation the state might forfeit the charter for non-user, the continued existence of the franchise imposed no obligation to exercise the charter power." This statement clearly rules on the first proposition presented by the present case, and, the question being one of constitutionality, eliminates as authority any state holdings which allege such a duty.¹¹

This leaves for consideration only the second proposition for which there is also remarkably little authority. Unfortunately the Oregon-Washington case leaves this question wide open. There may be, as is contended by the court in the instant case, an implication from certain passages in that case¹² that there can be an implied dedication other than an actual entering, but in view of the final holding these same

⁸*N. Y. ex rel. N. Y. and Queens Gas Co. v. McCall*, 245 U. S. 345, 38 Sup. Ct. 122, 62 L. ed. 337 (1917); *N. Y. ex rel. Woodhaven Gaslight Co. v. Public Service Comm. of N. Y.*, 269 U. S. 244, 46 Sup. Ct. 83, 70 L. ed. 225 (1925). The few state courts which have ruled on this point are all in accord. *Lukrawka v. Spring Valley Water Co.*, 196 Cal. 318, 146 Pac. 40 (1916); *People ex rel. Woodhaven Gaslight Co. v. Nixon*, 203 App. Div. 369, 196 N. Y. S. 623 (1922); *Okla. Gas and Electric Co. v. State*, 87 Okla. 174, 209 Pac. 777 (1922).

⁹288 U. S. 14, 53 Sup. Ct. 266, 77 L. ed. 588 (1932).

¹⁰*I.e.* the general charter right. The Oregon-Washington had no exclusive franchise.

¹¹*Root v. New Britain Gaslight Co.*, 91 Conn. 134, 99 Atl. 559 (1916); *Philadelphia Rural Transit Co. v. Public Service Comm. of Pa.*, 103 Pa. Super. 256, 158 Atl. 589 (1931).

¹²"We . . . think the power granted by par. 21 is confined to extensions within the undertaking of the carrier to serve and cannot be extended to embrace the building of what is essentially a new line to reach new territory." "Whether the railroad held itself out to serve the region in question must be decided in the light of all the facts. The record demonstrates that the territory to be traversed was one the company had neither actually nor impliedly agreed to serve with transportation facilities." 288 U. S. 14, 40, 43, 56 Sup. Ct. 266, 274, 275, 77 L. ed. 588, 604, 605 (1932).

passages could just as easily be interpreted to mean that something more than nearness of existing service to the new region is required. The Supreme Court of Missouri in *State ex rel. Ozark Power and Water Co. v. Public Service Commission of Mo.*¹³ sustained an order of the Commission requiring an extension under circumstances very similar to those in the instant case, but there existed the additional fact that the company's agents had canvassed the territory for prospective customers and had induced several persons to have their houses wired in contemplation of receiving the service. It would seem that some such positive act on the part of the company should be required before an implied dedication is inferred. The few state courts which deny the power of public service commissions to require extensions do not consider the question of implied dedication, but base their holdings solely upon the proposition contended for by the Power Co. in the present case, that the right carries no duty.¹⁴ The question of implied dedication will necessarily remain unanswered until the Supreme Court of the United States rules squarely on the point.

JAMES W. DORSEY.

Taxation—Constitutional Law—State Use Tax.

A recent North Carolina statute¹ provides that every purchaser of a motor vehicle for use in North Carolina must pay a use tax of three per cent of the purchase price. If the purchaser has paid the North Carolina sales tax² the amount exacted under this statute is refunded.

The plaintiff, a resident of North Carolina, purchased an automobile in Virginia for use in North Carolina. The Commissioner of Revenue refused to issue him a license until he paid the tax imposed by the above statute. The plaintiff paid the tax under protest and sued to recover it contending that the statute under which it was collected was unconstitutional in that it burdened interstate commerce, was discriminatory, and further that it violated the provision of the State Constitution which requires all taxes to be by a uniform rule. The statute was held to violate neither the Federal nor the State Constitution.³

One of the primary objections urged against a retail sales tax is that it encourages out of state purchases. To remedy this evil with-

¹³ 287 Mo. 522, 229 S. W. 782 (1921).

¹⁴ *Atchison, T. and S. F. Ry. Co. v. Railroad Comm. of Cal.*, 173 Cal. 577, 160 Pac. 828 (1916); *Towers v. United Railways of Baltimore*, 126 Md. 478, 95 Atl. 170 (1915); *Mays v. Seaboard A. L. Ry.*, 75 S. C. 455, 56 S. E. 30 (1906).

¹ N. C. CODE ANN. (Michie, 1935) §7880(156)e(13); see *Statutory Changes in North Carolina in 1935* (1935) 13 N. C. L. REV. 420.

² N. C. CODE ANN. (Michie, 1935) §7880(156)e(12).

³ *Powell v. Maxwell*, Comm'r. of Revenue, 210 N. C. 211, 186 S. E. 326 (1936).