



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 19 | Number 1

Article 15

12-1-1940

Constitutional Law -- Validity of Parking Meter Ordinances

V. Lamar Gudger

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

V. L. Gudger, *Constitutional Law -- Validity of Parking Meter Ordinances*, 19 N.C. L. REV. 70 (1940).

Available at: <http://scholarship.law.unc.edu/nclr/vol19/iss1/15>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Constitutional Law—Validity of Parking Meter Ordinances

The North Carolina Supreme Court recently held that a parking meter ordinance exceeded the power of a municipality to regulate parking.¹ The court decided that there was no substantial relation between the meter charge and the prevention of parking for an unreasonable length of time; that the meter charge was not a proper inspection fee; that the power to regulate did not authorize the imposition of a tax upon the privilege sought to be regulated; and that the ordinance violated a statute restricting municipal license fees on operating motor vehicles to \$1.00.

In determining the validity of parking meter ordinances, the following questions have arisen:²

Does a Municipality Have the Power to Charge a License Fee as a Reasonable Means of Regulating Parking?

The authority of a municipality to regulate parking is universally recognized, whether such authority be derived from statutes authorizing regulation of traffic and the use of the streets³ or specifically authorizing the regulation of parking.⁴ The standards of reasonable regulation are fundamentally the same in both instances, the courts upholding only those regulations which have a substantial relation to traffic safety.⁵

¹ Rhodes, Inc. v. Raleigh, 217 N. C. 627, 9 S. E. 389 (1940).

² Problems, other than those discussed, presented by the parking meter cases are: (a) Does a municipality have power to pledge revenue from parking meters to pay for their purchase and installation? By the great weight of authority this power exists: Franklin Trust Co. v. Loveland, 3 F.(2d) 114 (CCA 8th 1924); Ward v. Chicago, 342 Ill. 167, 173 N. E. 810 (1930); Brockebrough v. Water Comm'rs., 134 N. C. 1, 46 S. E. 28 (1903) (pledge of tolls or rents from waterworks to pay for their installation). But see Brodkey v. Sioux City, 291 N. W. 171, 175 (Iowa 1940) (a parking meter case) "We have affirmed the rule that the pledging by a city of revenue is unauthorized in absence of specific statutory authority"; Van Eaton v. Sidney, 211 Iowa 986, 231 N. W. 475, 71 A. L. R. 820 (1930). (b) May a municipality delegate to a commissioner the power to install meters at his discretion and regulate their use? See Brodkey v. Sioux City, 291 N. W. 171, 173 (Iowa 1940). (c) Is the licensing of the exclusive use of parking meter spaces for one hour a leasing of property dedicated to public use? See Birmingham v. Hood-McPherson Realty Co., 233 Ala. 352, 172 So. 114, 116 (1937) (suggesting that such exclusive use would be a leasing); cf. Schilling v. Melbourne (1928), Vict. L. R. 302, 16 B. R. C. 45 (holding an ordinance invalid which purported to permit drivers to park vehicles in certain designated street zones for one shilling per day). But see *In re* Opinion of Justices, 8 N. E. (2d) 179, 182 (Mass. 1937).

³ State *ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); Rhodes, Inc., v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940). See cases cited *infra* note 6.

⁴ Clark v. New Castle, 32 D. & C. 371 (Pa. 1938); County Court of Webster County v. Roman, 3 S. E. (2d) 631 (W. Va. 1939). Notice that the N. Y. VEHICLE CODE, §54, as amended by N. Y. Pub. Laws of 1937, c. 502, specifically authorizes use of parking meters in municipal traffic regulation.

⁵ District of Columbia v. Smith, 68 App. D. C. 104, 93 F. (2d) 650 (1937) (upholding an ordinance prohibiting parking between 2 a.m. and 8 p.m. to facilitate snow removal); State v. Carter, 205 N. C. 761, 172 S. E. 415 (1934);

A decided majority⁶ of the parking meter decisions have upheld the meter fee as a reasonable means of regulating parking, if imposed in a zone in which municipal regulation for parking is permitted, ruling, in effect, that ". . . whatever tends to make regulation effective is a proper exercise of that power. It justifies the charge of a fee and the imposition of a penalty."⁷

The opposite and minority view is expressed by the Rhode Island court, which held that without specific delegation of authority a municipality could not exact a fee for parking, since a statute delegating power to regulate parking ". . . cannot be enlarged by implication unless that is *necessary* to make the statute effective and to accomplish its object."⁸

The instant case did not question the power of a municipality generally to secure regulation by means of a license fee although the power to license is not specifically delegated. Instead, it was held that a municipality had no power to impose a particular license fee which neither bore a "substantial relation" to parking regulation, nor constituted a proper license fee; hence, the court concluded that it must be an excise tax, and as such could not be imposed under the police power to regulate parking.⁹

Is the Revenue Derived So Excessive As to Make the Ordinance a Taxing Measure?

Few cities have express authority to tax the use of city streets for revenue. Where this power exists, however, an ordinance imposing a tax upon parking would seem valid.¹⁰ But where a parking meter or-

Wonewoc v. Taubert, 203 Wis. 73, 233 N. W. 755, 72 A. L. R. 229 (1930) (upholding an ordinance prescribing manner of parking).

⁶ State *ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); *In re* Opinion of Justices, 8 N. E. (2d) 179 (Mass. 1937); Hendricks v. Minneapolis, 290 N. W. 427 (Minn. 1940); Gilsey Bldgs., Inc., v. Great Neck Plaza, 170 Misc. 945, 11 N. Y. Supp. (2d) 694 (Sup. Ct., 1939); *Ex parte* Duncan, 179 Okla. 355, 65 P. (2d) 1015 (1937); Clark v. New Castle, 32 D. & C. 371 (Pa. 1938); Owens v. Owens, 8 S. E. (2d) 339 (S. C. 1940); Harper v. Wichita Falls, 105 S. W. (2d) 743 (Tex. Civ. App. 1937); *Ex parte* Harrison, 122 S. W. (2d) 314 (Tex. Crim. App. 1938); County Court v. Roman, 3 S. E. (2d) 631 (W. Va. 1939) (strong dissenting opinion by Fox, President). *Contra*: Birmingham v. Hood-McPherson Realty Co., 233 Ala. 352, 172 So. 114 (1937); Rhodes, Inc., v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940); *In re* Opinion to House of Representatives, 9 R. I. 94, 5 A. (2d) 455 (1939).

⁷ Buffalo v. Stevenson, 207 N. Y. 258, 100 N. E. 798 (1913) (upholding municipal ordinance requiring a paid permit to open any city street to connect with a sewer, water, or power main).

⁸ 59 R. I. 94, 5 A. (2d) 455, 457 (1939) (italics supplied); see dissenting opinion in County Court of Webster County v. Roman, 3 S. E. (2d) 631, 634 (W. Va. 1939); 1 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §237.

⁹ Rhodes, Inc., v. Raleigh, 217 N. C. 627, 630, 9 S. E. (2d) 389, 391 (1940).

¹⁰ A license fee on the operation of a motor vehicle imposed by a home rule city in Ohio has been upheld as a valid excise tax under OHIO CONST., art. XVIII, §3; Saviers v. Smith, 101 Ohio St. 132, 128 N. E. 269 (1920). Accord: State

ordinance is passed as a regulatory measure under the police power, no greater fee should be charged than is necessary to cover the costs of supplying the privilege and regulating its use.¹¹ For a municipality cannot under "the guise of a police regulation impose a revenue tax where it has no authority to impose a revenue tax."¹²

But courts give great weight to the presumption that a license fee is reasonable;¹³ this may be overcome only by showing a glaring discrepancy between revenue and administrative costs.¹⁴ The burden of proving such discrepancy rests upon the complainant, and necessitates proof not only of the revenue of the meters and the expense of installing them but proof of all the expenses of regulating parking.¹⁵ The courts have indicated that they may consider expenses of police patrolling, costs of maintaining records, possible liability for torts arising from parking supervision, and, perhaps, loss by wear on the roads as among those "incidental expenses."¹⁶ Thus, it is not surprising that only one court to date has ruled the parking meter ordinance invalid because of excessive revenue,¹⁷ and that a Florida case sustained a parking meter ordinance which brought a township \$55,000 annual revenue as opposed to \$4,000 annual expenses for maintaining meters.¹⁸ The question of reasonable revenue was never raised in the principal case, although in their nine months of operation Raleigh's parking meters, installed for \$10,000, collected a total revenue of \$11,494.¹⁹

It is interesting to speculate upon the possible decisions of these courts should a glaring discrepancy be revealed between the revenue from the meters and the expenses of administration over a substantial

ex rel. Zielonka v. Carrel, 97 Ohio St. 220, 124 N. E. 134 (1939) (recognizing the power of home rule cities in Ohio to place an excise tax on occupations). Note (1938) OHIO STATE UNIV. L. J. 198 (discussing parking meter fees as an excise tax).

¹¹ *In re* Opinion of Justices, 8 N. E. (2d) 179 (Mass. 1937); *Ex parte* Duncan, 179 Okla. 355, 65 P.(2d) 1015 (1937); *Ex parte* Harrison, 122 S. W. (2d) 314 (Tex. Civ. App. 1938). 3 McQUILLAN, MUNICIPAL CORPORATIONS (2d ed. 1928) 1089, 1102.

¹² 4 COOLEY, TAXATION (4th ed. 1924) §1680. Accord: *State v. Beam*, 91 N. C. 554 (1884).

¹³ *State ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); *Ex parte* Holt, 74 Okla. 226, 178 Pac. 260 (1918); *Clark v. New Castle*, 32 D. & C. 371 (Pa. 1937); *Gilsey Bldgs. v. Great Neck Plaza*, 170 Misc. 945, 11 N. Y. Supp. (2d) 694 (Sup. Ct., 1939). 2 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §672.

¹⁴ *Atkins v. Phillips*, 26 Fla. 433, 8 So. 409 (1918); *State ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); *Van Baalen v. People*, 40 Mich. 258 (1878). 2 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §592.

¹⁵ See cases cited *infra* note 18.

¹⁶ *State ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314, 317 (1936); *Hendricks v. Minneapolis*, 290 N. W. 428, 430 (Minn. 1940); *Clark v. New Castle*, 32 D. & C. 371, 381 (Pa. 1938).

¹⁷ *Brodkey v. Sioux City*, 291 N. W. 171 (Iowa 1940).

¹⁸ *State ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); *American City*, Aug., 1936, p. 56.

¹⁹ *Popular Government*, July-Aug., 1940, p. 11.

period of time.²⁰ For there is authority that a municipal ordinance will not be impeached because "incidentally the city's receipts of moneys are increased," unless this increment is so excessive as to indicate that the ordinance was literally passed "for tax purposes."²¹ Furthermore, most courts regard the parking fee as having a regulatory force. *Clark v. New Castle* states: "The novel feature of the parking device is that not only does the nickel toll pay the cost of regulation, but it is the nickel itself which regulates. Rather than pay the nickel the motorist will park elsewhere than in the restricted street, or will cut his stay short."²²

If it can be proved that a smaller fee would not effectively accomplish regulation, a fee yielding excessive revenue might escape invalidity, as being necessary for effective regulation. But if the court should find, as it did in the principal case, that the ordinance "does not depend in any way upon the meter charge, but, as heretofore, upon a specification of the period during which it is lawful to park,"²³ this contention, resting upon a contrary presumption, necessarily fails.

Is the Installation of Parking Meters an Unwarranted Invasion of the Public's Right to Free and Unobstructed Use of the Streets?

In as much as the right of passage is subject to reasonable regulation,²⁴ any permanent obstructions on the highway designed to promote such regulation, such as sign posts, elevated safety zones, and stop signs, are permissible. Thus, the parking meter device if reasonably designed to promote traffic regulation would not be an actionable nuisance *per se*.²⁵ The public's *right to free passage* is generally considered an absolute right which cannot be subjected to charge by municipalities.²⁶ Parking, however, is generally defined as a mere *privilege*, incidental to this right of passage and free use of the streets.²⁷ Thus, it is

²⁰ Recent reports of parking meter revenues suggest that they are producing revenue far in excess of administrative costs: American City, May, 1936, p. 87; July, 1939, p. 53; June, 1940, p. 46; Oct., 1940, p. 13, 99. Notes (1937) 22 IOWA LAW REV. 713; (1937-38) 4 OHIO L. J. 198; (1939) 3 UNIV. DETROIT L. J. 22.

²¹ See *Van Baolen v. People*, 40 Mich. 258 (1879); *cf.* *Mankato v. Fowler*, 32 Minn. 364, 20 N. W. 361 (1884); see *Atkins v. Phillips*, 26 Fla. 281, 302 So. 429, 432 (1890); see *State ex rel. Harkow v. McCarthy*, 126 Fla. 433, 171 So. 314, 317 (1936); note (1931) 75 A. L. R. 17 and cases cited.

²² 32 D. & C. 371, 378 (Pa. 1937); *cf.* *Harper v. Wichita Falls*, 105 S. W. (2d) 150 (Tex. Civ. App. 1937). For reports of effect of parking meters on traffic safety see citations *infra* note 50.

²³ *Rhodes v. Raleigh*, 217 N. C. 627, 631, 9 S. E. (2d) 389, 391 (1940).

²⁴ See *State ex rel. Harkow v. McCarthy*, 126 Fla. 433, 171 So. 314, 316 (1936); 2 ELLIOTT, ROADS AND STREETS (4th ed. 1926) §828.

²⁵ See *In re Opinion of Justices*, 8 N. E. (2d) 179, 181 (Mass. 1937).

²⁶ See *Harper v. Wichita Falls*, 105 S. W. (2d) 743, 750 (Tex. Civ. App. 1937). See note 27, *supra*.

²⁷ *Owens v. Owens*, 8 S. E. (2d) 339, 343 (S. C. 1940); see *Harper v. Wichita Falls*, 105 S. W. 743, 750 (Tex. Civ. App. 1937). Accord: *Welsh v. Morristown*,

analogous to the privileged use of the streets by taxis, busses, and carriers, which may be charged a license fee independent of the limited license fee upon all motor vehicles.²⁸ This rather elusive distinction is clearly recognized in *Ex parte Duncan*.²⁹ There the court declared that a statutory restriction on a municipality's power to license the *free use of the public highways* did not forbid a license fee on the *privilege of parking*. However, the North Carolina court has interpreted a statute limiting the fee a municipality may impose upon the privilege of operating a motor vehicle to \$1.00,³⁰ as excluding imposition of any other fee by a municipality for use of the streets by motor carriers.³¹ Accordingly this statute is construed in the instant case to prohibit a license fee on the parking privilege.

Stopping a vehicle to load or unload passengers or freight is generally recognized as a right incident to that of passage.³² Many of the later parking meter ordinances, including the one in question, specifically exempt vehicles thus engaged from the operation of the statute.³³ Even in the absence of such a provision, the courts usually read it in, either ruling that such stopping is an incident of passage³⁴ or that a vehicle being loaded cannot be considered parked—a parked car being by definition unattended.³⁵

The Alabama Supreme Court ruled that a city departed from the

98 N. J. L. 630, 121 Atl. 697 (Sup. Ct. 1923); *Ex parte Duncan*, 179 Okla. 355, 65 P.(2d) 1015 (1937).

²⁸ *Southeastern Exp. Co. v. Charlotte*, 186 N. C. 668, 120 S. E. 475 (1923); *Ex parte Holt*, 740 Okla. 226, 178 Pac. 260 (1919). Accord: *Ewing v. Leavenworth*, 226 U. S. 464, 33 Sup. Ct. 157, 57 L. ed. 303 (1913); note (1924) 31 A. L. R. 589.

²⁹ 179 Okla. 355, 65 P(2d) 1015 (1937).

³⁰ MOTOR VEHICLE ACT, c. 2, §29, N. C. Pub. Laws 1921; N. C. CODE ANN. (Michie 1935), §2612a. Compare statutory limitation invoked in other parking meter cases: *Shreveport v. Brister*, 194 So. 566 (La. 1940); *Monsour v. Shreveport*, 194 La. 569 (La. 1940).

³¹ *State v. Fink*, 179 N. C. 712, 120 S. E. 475 (1923) (invoking N. C. Public Laws of 1919, c. 189, §5). But *cf.* *Southeastern Exp. Co. v. Charlotte*, 186 N. C. 668, 120 S. E. 475 (1923) (holding N. C. Public Laws of 1921, c. 2, §29 constitutional, said act authorizing municipalities to charge a license fee not exceeding \$50 against intra-urban carriers).

³² *Pugh v. Des Moines*, 176 Iowa 593, 156 N. W. 892 (1916); *cf.* *Lowell v. Pendleton Auto Co.*, 123 Ore. 383, 261 Pac. 415 (1927); *Wonewoc v. Taubert*, 203 Wis. 73, 233 N. W. 755 (1930). Compare *Haggenjos v. Chicago*, 336 Ill. 573, 168 N. E. 661 (1921) (holding invalid an ordinance prohibiting all parking in Chicago's loop district) with *Chicago v. McKinley*, 344 Ill. 279, 176 N. E. 261 (1931) (upholding a subsequent ordinance prohibiting all stopping but that for purposes of loading or unloading passengers or freight).

³³ Section 12 of the Raleigh parking meter ordinance provides: "During actual loading and unloading of delivery vehicles within said parking zones, the operator of such vehicles shall be exempt from the provisions of this ordinance."

³⁴ *Ex parte Duncan*, 179 Okla. 355, 65 P.(2d) 1015 (1937).

³⁵ *Gilsey v. Great Neck Plaza*, 170 Misc. 945, 11 N. Y. Supp. (2d) 694 (Sup. Ct., 1939); *Clark v. New Castle*, 32 D. & C. 371 (Pa. 1938).

terms of a dedicatory deed when it charged a fee for parking.³⁶ Parking was discussed as an incident of that "free use of the streets" (as a right and not a privilege), which had been secured to the public in the deed. This decision applied the rule that a trustee municipality may be enjoined against deviating from the terms of a dedicatory deed at the suit of any injured part. Other cases granting such injunctions have denied that a municipality was authorized under the deed to erect telephone poles, install railway lines, or widen the streets to the destruction of the sidewalks.³⁷ But heretofore none has held that a dedicatory deed could place a limitation upon the power of a municipality to regulate traffic and the use of the streets.

Does the Installation of Parking Meters Constitute an Unreasonable Interference with the Property Rights of Abutting Land Owners So As to Deprive Them of Property without Due Process?

Another basis for the Alabama decision was that rights of the plaintiff as an abutting land owner had been violated by the installation of parking meters in front of his property.³⁸ The rights of abutting land-owners vary in each state,³⁹ yet most courts agree that an abutter possesses an absolute right of ingress and egress, whether labeled as easements or property rights,⁴⁰ which cannot be terminated or even restricted except in case of public necessity.⁴¹ Generally, however, the municipality is admitted to have authority to determine where and in what manner a property owner shall exercise this right.⁴²

The Alabama court states unequivocally that "the right of ingress and egress is necessarily burdened with the right, within reasonable limitations, of parking a vehicle or car" and that any fee charged the abutting owner for the exercise of this right is an obstruction to that

³⁶ *Birmingham v. Hood-McPherson Realty Co.*, 233 Ala. 352, 172 So. 114 (1937).

³⁷ *Brown v. East Point*, 149 Ga. 18, 95 S. E. 962 (1918); *Collier v. Baker*, 160 Tenn. 571, 27 S. E. (2d) 1085 (1930); *Road Comm. v. Chesapeake & Ohio Ry.*, 115 W. Va. 647, 177 S. E. 530 (1934); note (1935) 41 A. L. R. 1410.

³⁸ *Birmingham v. Hood-McPherson Realty Co.*, 238 Ala. 352, 172 So. 114 (1937).

³⁹ See *Savner v. New York*, 206 U. S. 536, 27 Sup. Ct. 686, 57 L. ed. 117 (1906) *aff'd* 180 N. Y. 27, 72 S. E. 579 (1904).

⁴⁰ The abutter's right of access is generally considered a property right if he owns the fee in the street and an easement if the fee is held by the city; *State v. Burkett*, 119 Md. 609, 87 Atl. 514 (1913); see *In re Ollinger*, 160 App. Div. 96, 103, 145 N. Y. Supp. 173, 179 (1st Dep't. 1914).

⁴¹ *Breinig v. Allegheny*, 2 A. (2d) 842 (Pa. 1938).

⁴² *Boston v. Perry*, 22 N. E. (2d) 627 (Mass. 1939) (upholding ordinance prohibiting construction of driveways across certain busy sidewalks): *Fowler v. Nelson*, 213 Mo. App. 82, 246 S. W. 638 (1923) (held that abutter with rear alley had no absolute right to construct a driveway across busy sidewalk). See *Gilsey Bldgs. v. Great Neck Plaza*, 170 Misc. 945, 11 N. Y. Supp. (2d) 604 (Sup. Ct., 1939). 3 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §1125.

free access and hence unconstitutional.⁴³ But by the weight of authority an abutter has no right or private easement to park in front of his property different from that incidental privilege of parking he shares with the public in its easement of travel.⁴⁴ And the courts uniformly hold that once upon the public highway he is subject to all the regulations and limitations imposed on the traveling public in general.⁴⁵

When an abutting owner proves that parking meters in front of his place of business drive away customers, who rather than pay the parking fee will go elsewhere and deal with his competitors, he may prove a loss of property which the courts have in many instances protected.⁴⁶ Certainly if the abutting owner can present substantial evidence that enforcement of the ordinance constitutes an arbitrary discrimination against him, the courts will grant him relief.⁴⁷ Whether or not the courts will invalidate a regulation which indirectly discriminates between particular enterprisers because of their location depends upon the reasonableness of the measure as an exercise of police power. Zoning ordinances which place similar discriminating restrictions on business and property rights solely on the basis of their location have been consistently upheld, when found to have a substantial relation to promoting public health, safety, morals, or general welfare.⁴⁸

Current reports from municipal governments indicate that parking

⁴³ *Birmingham v. Hood-McPherson Realty Co.*, 233 Ala. 352, 172 So. 114 (1937). This conclusion that an abutting owner has an absolute right to park before his property finds support in decisions granting injunctions against taxi stands on the street adjoining complainant's property; *Eubank v. Yellow Cab Co.*, 84 Ind. 144, 149 N. E. 647 (1925); *Odell v. Bretney*, 93 App. Div. 607, 87 N. Y. Supp. 655 (1st Dep't 1904); and against motorists who consistently park before complainant's property for an unreasonable length of time; *Decker v. Goddard*, 233 App. Div. 139, 251 N. Y. Supp. 440 (4th Dep't 1932) *rev'd* 139 Misc. 824, 249 N. Y. Supp. 381 (Sup. Ct., 1931).

⁴⁴ *Montgomery v. Parker*, 21 So. 452, 454 (Ala. 1897); *Duluth v. Esterley*, 115 Minn. 64, 131 N. W. 791 (1911).

⁴⁵ See *Clark v. New Castle*, 32 D. & C. 371, 388 (Pa. 1938). Accord: *Jones Beach Boulevard Estate, Inc. v. Moses*, 368 N. Y. 362, 197 N. E. 313 (1935) (denying that an abutting owner had any right to ignore ordinance prohibiting left turn, though thereby he was required to go ten miles out of his way to reach his property). See cases cited *supra* note 54. But see *Birmingham v. Hood-McPherson Realty Co.*, 233 Ala. 352, 172 So. 114 (1937) (considering stopping as an incident of abutter's right of access, hence not subject to charge).

⁴⁶ See *Lauf v. Shinner & Co.*, 82 F.(2d) 68, 72 (C. C. A. 7th, 1936), *rev'd* 303 U. S. 323, 58 Sup. Ct. 578, 82 L. ed. 872 (1938). Accord: *Callahan v. Gilman*, 107 N. Y. 360, 14 N. E. 264 (1887) (recognizing special damage to complainant's business interests by D's use of loading platform across sidewalk nearby, obstructing the passage of complainant's potential customers).

⁴⁷ *Yick Wo v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. ed. 220 (1885); see *Crowley v. Christensen*, 137 U. S. 86, 94, 47 Sup. Ct. 675, 71 L. ed. 1228, 53 A. L. R. 1210 (1927).

⁴⁸ *Euclid v. Ambler*, 272 U. S. 365, 47 Sup. Ct. 114, 71 L. ed. 303, 54 A. L. R. 1016 (1932); *Larrabee v. Bell*, 56 App. D. C. 121, 10 F.(2d) 986 (1926); *Appeal of Parker*, 214 N. C. 51, 197 S. E. 706 (1939). 3 WILLOUGHBY, THE CONSTITUTION OF THE UNITED STATES (2d ed. 1929) §1190. Cf. note (1924) 32 A. L. R. on the validity of municipal regulations excluding or limiting automobile traffic in certain streets.

meters are proving singularly effective in traffic regulation, diminishing the difficulty in finding parking spaces, reducing the number of patrolmen necessary to regulate parking, and in some instances, apparently reducing the number of traffic accidents by as much as thirty-five per cent.⁴⁹ Moreover they seem to be rapidly acquiring public approval wherever installed. If these reports are representative, a more lenient judicial attitude toward parking meters appears warranted.⁵⁰ But it is becoming increasingly apparent that revenue derived from the five-cent-per-hour fee generally imposed far exceeds any reasonable estimate of the costs of regulating parking,⁵¹ and this issue may well be the determining factor in future parking meter decisions.

V. LAMAR GUDGER.

Deeds—Defective Registration as Breach of Warranty.

A recent North Carolina decision, *Dorman v. Goodman*,¹ has received considerable attention and has inspired some comment² as an important ruling on an aspect of the recording and registry laws, namely, the effect of improperly indexing the name of the grantor. Another, and perhaps equally important, holding in the case was disregarded by the comment in the *Harvard Law Review*, and was almost ignored by the court itself. Accordingly, the case raises an unusual question concerning the legal remedies of persons damaged by the operation of registration statutes.

In 1925, *A* conveyed a parcel of land to *B* by warranty deed which was recorded, but the entry in the "grantors" index was defective by reason of a wrong initial. In 1925, *B* conveyed to *C* by warranty deed one half of the parcel of land, and in 1930, *B* conveyed the remaining half to *C* by warranty deed. Both of these deeds were properly recorded and indexed. In 1932, *C* conveyed the land to *D* by warranty deed properly recorded and indexed. In 1934, judgments against *A*, which had been obtained in 1926, were docketed by *X*. Execution was issued and the land sold by the sheriff, being bid in by *D*. *D* now sued *C* for breach of warranty of title. The court held that these judgments, when docketed, became a lien upon the land in question because of the improper indexing of the deed from *A* to *B*. The court further held that this encumbrance was in breach of the warranties contained in the deed from *C* to *D*. Only fourteen words of the opinion were devoted to this latter holding: ". . . In breach of the covenants and warranties in the deed from defendants to plaintiff."

⁴⁹ American City, July, 1939, p. 53; June, 1940, p. 46; Oct., 1940, p. 13.

⁵⁰ American City, Dec., 1939, p. 63; June, 1940, p. 81; Oct., 1940, p. 99.

⁵¹ See note 22, *supra*.

¹ 213 N. C. 406, 196 S. E. 352 (1938).

² Note (1938) 52 HARV. L. REV. 170.