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Public Law: Public Utilities

Melvin G. Dakin

in making an assessment where the line between two parishes was indefinite and uncertain and had not been fixed on the ground. In such a case, the line is "in dispute under the meaning of the statute," for the object of the statute was "to make certain that the same property would not be assessed in two parishes."[22]

DEDICATION TO PUBLIC USE

In *Mecobon v. Police Jury of Jefferson Parish*[23] the court applied the settled rule that intention to dedicate a plot of ground to public use must be clearly established and found no dedication under the facts presented.

PUBLIC UTILITIES

*Melvin G. Dakin**

In *Illinois Central Railroad Company v. Louisiana Public Service Commission*[1] the court found both "warrant in law" and "warrant in the record" for commission action ordering a railroad to permit construction of a crossing of its right of way by public authorities. The validity of the statute[2] authorizing the commission to require such construction was upheld against an indirect challenge to its constitutionality as a taking of private property for public purposes without just compensation in contravention of the Constitution.[3] Argument of counsel that the railroad held its land in perfect ownership within Article 490 of the Civil Code and could be deprived of it only by expropriation was rejected in favor of the principle that "[i]mplicit in the charter and franchise of the railroad company is the implied condition that it is granted subject to the right of the State, in the exercise of its police power, to establish and authorize new works necessary and subservient to the convenience and safety of its citizens which might cause damage to the property of the railroad. To this end, the State has the power to require of the railroad the uncompensated duty of constructing and maintaining

22. 71 So.2d 865, 868 (La. 1954).
23. 224 La. 793, 70 So.2d 687 (1954).
* Professor of Law, Louisiana State University.
1. 224 La. 279, 69 So.2d 43 (1953).
2. LA. R.S. 45:841 (1950).
3. LA. CONST. Art. I, § 2.

all such crossings over its right of way as are reasonable and necessary for the public."[4]

The court cites in support of the principle articulated in *Prosser v. Seaboard Air Line Railroad Company*,[5] a South Carolina decision. A quotation in that case from an opinion of Mr. Justice Harlan[6] furthers understanding of the foundations of the principle:

> "The company laid its tracks subject to the condition, necessarily implied, that their use could be so regulated by competent authority as to insure the public safety. And as all property, whether owned by private persons or by corporations, is held subject to the authority of the State to regulate its use in such manner as not to unnecessarily endanger the lives and the personal safety of the people, it is not a condition of the exercise of that authority that the State shall indemnify the owners of property for the damage or injury resulting from its exercise. Property thus damaged or injured is not, within the meaning of the Constitution, taken for public use, nor is the owner deprived of it without due process of law. The requirement that compensation is made for private property taken for public use imposes no restriction upon the inherent power of the State by reasonable regulations to protect the lives and secure the safety of the people."

In effect a railroad is required to maintain its property in a safe condition at its own cost, which includes the provision of safe, adequate, and convenient crossings. Here, of course, the railroad was not being required to defray the cost of constructing the crossing but only to consent to its construction.

In sustaining the commission's decision on the fact questions of whether the proposed crossing was unduly hazardous to the public and would cause undue congestion and danger in the railroad's operations, the court concluded that the decision of the commission was not arbitrary or capricious since it could not say that the decision "was plainly contrary to the facts or unsupported by evidence." The court cited also the long-standing rule that a decision of an administrative body would be accorded "great weight" and would not be disturbed in the absence of a "clear showing of abuse of power."[7]

4. 224 La. 279, 286, 69 So.2d 43, 46 (1953).
5. 216 S.C. 33, 56 S.E.2d 591 (1949).
6. Chicago, B. & Q.R.R. v. Chicago, 166 U.S. 226, 252 (1896).
7. 224 La. 279, 289, 69 So.2d 43, 47 (1953).

As a result of the decision in *Kansas City Southern R.R. v. Louisiana Public Service Commission*,[8] commission's General Order Number 2, paragraph 5,[9] may hereafter be read with the bracketed insertion: "Nothing herein, or in the orders, rules and regulations of the Railroad Commission of Louisiana as they now exist, shall prevent the carriage, storage or handling of property free or at reduced rates, for the [federal], state, parish, city or town government, where the [federal], state, parish, city or town government is the direct beneficiary of such free or reduced rates. . . ."

This result is reached by the court in affirming a permanent injunction against an order of the commission directing the railroad to cease and desist from according the United States Government any different treatment from that accorded other shippers in Louisiana intrastate commerce.

The commission issued its order[10] on the ground that the railroad, in quoting a preferential rate to the United States Government, violated paragraph 4 of General Order Number 2[11] providing that "There shall be no unjust discrimination, undue preference or advantage, or undue prejudice in favor of or against any shipper, passenger or user of any of the transportation facilities or services rendered by any common carrier or other public service corporation subject to supervision, regulation and control by this Commission. . . ."

Counsel for the commission and intervening tank truck operators argued that this provision was violated by the railroad in quoting a preferential rate which caused undue discrimination *against other carriers.* No shippers or users of the railroad's facilities were complaining of the preference, however—only tank truck carriers who would have to reduce their rates to the United States Government in order to stay in competition with the railroad.

The court interpreted the commission order as not directed to the regulation or elimination of discrimination between carriers but only to discrimination between shippers and users. While the preferential rate quoted to the United States Government was discriminatory as against other shippers, it was a

8. 225 La. 399, 73 So.2d 188 (1954).

9. Louisiana Public Service Commission, 1 ANN. REP. 80 (1921).

10. Louisiana Public Service Commission, 32 ANN. REP. 146, Order No. 6128 (1952).

11. Louisiana Public Service Commission, 1 ANN. REP. 79, 80 (1921).

discrimination in favor of the public and in accord with public policy as well as the expressed policy of the commission's General Order Number 2 exempting agencies of the public from its restrictions.[12]

STATE AND LOCAL TAXATION

*Charles A. Reynard**

Five of the decisions at the past term are of significance to students of state and local taxation. Two of these presented questions relating to ad valorem taxation and the remaining three involved corporate franchise taxation, intergovernmental tax immunity and summary confiscation of property used in violation of state revenue measures.

State Farm Mutual Auto. Insurance Co. v. Ott[1] presented the question whether deferred premium payments on automobile insurance policies are "credits" within the reach of state and city ad valorem taxation. It was shown to be the practice of the insurance company to issue its automobile insurance policies for periods of six months upon the payment of one-third of the premium with the stipulation that the balance was to be paid at the expiration of sixty days. The insurer contended that since it reserved the right to cancel its policies at the end of the sixty-day period upon the non-payment of the balance of the premium, the deferred payments were not in fact "credits"; or, put in another way, it was the company's contention that it was not extending credit under this method of doing business. The court rejected the claim of the insurance company in a unanimous opinion by Justice Hawthorne because "By the very terms of the policy issued, the insurance company obligates itself to insure for a term of six months. . . ."[2] The right of cancellation for non-payment of deferred premiums was regarded as immaterial since the policy did not relieve the insured from the obligation to pay the full amount of the premium, and thereby invested the insurer with the right, if it chose, to compel the payment of the deferred portion of the premium.

In *Albritton v. Childers*[3] the central issue of the case con-

12. *Ibid.*

* Professor of Law, Louisiana State University.

1. 224 La. 1008, 71 So.2d 548 (1954).

2. 224 La. 1008, 1012, 71 So.2d 548, 550 (1954).

3. 74 So.2d 156 (La. 1954).