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Robert L. Bletcher

and the victim's obligation is transferred to this same third party. Nothing more in the way of money or tangible property has moved from the victim after this transaction than had gone before. What demarcation is encountered that would make the defendant's first act (obtaining the note) a mere civil action and his second act (discounting the note) a criminal offense? It is submitted that no such demarcation should be found. The only apparent argument is that where a non-negotiable instrument is involved, the victim's obligation is voidable and where a negotiable instrument is involved the victim may lose the right to avoid the obligation. But it would seem that the state, when it expressly provided that an evidence of debt was personal property, desired to punish defendant for wrongfully obtaining the obligation, and not to allow the criminality of defendant's acts to rest on the victim's decision to avoid or affirm an obligation, or to determine criminality on the basis of any resulting financial loss to the victim.

It seems but a logical conclusion that where evidences of debt are considered personal property in and of themselves and have been executed and delivered to the defendant, title and possession of personal property has passed. The remaining question then, is what intangibles are to be construed as evidences of debt or things in action within the meaning of the false pretense statute. *Caruso* holds that contractual obligations may be so construed.

Conclusion

It would seem advisable that the legislature should consider the merits of revising the theft statute bringing it into line with provisions of many other states making it an offense "to obtain, by false pretense, the signature of any person to any written instrument, the false making of which would be punished as forgery." This seems particularly desirable because of the existing ambiguity between California Penal Code, sections 484 and 1110, and also because of the sparsity of cases construing a contractual obligation as personal property within the theft statute, none of which have been reviewed by the California Supreme Court.

*Richard L. Weatherspoon**

* Member, Second Year class.

PUBLIC UTILITIES: Dedication of Use As Prerequisite to Regulation of Oil and Gas Corporation

In *Richfield Oil Corporation v. Public Utilities Commission*,[1] the California Supreme Court had to decide whether the Commission had jurisdiction over the petitioner and thus could regulate its activities. This was the first time the question of dedication as a prerequisite of public utility regulation had been raised in connection with a gas corporation before the court, even though such an organization is defined[2] and classified as a public utility[3] in the statutes.

[1] 54 Cal. 2d —, 354 P.2d 4, 6 Cal. Rptr. 548 (1960).

[2] CAL. PUB. UTIL. CODE § 222.

[3] CAL. PUB. UTIL. CODE § 216.

In 1959, Southern California Edison Company needed a long term supply of natural gas to use as a fuel for a new generating plant in Ventura County, California. After the regulated utilities in the area refused to supply such gas, the petitioner, which had accumulated a large reserve of gas over and above its own requirement for maintenance of pressure in oil fields, contracted to sell and deliver the needed supply to Edison for a period of twenty-five years. In order to deliver the gas, the petitioner had to build a pipeline from its oilfields to the new plant. This pipeline traversed a national forest and it was therefore necessary to secure a right of way permit from the United States of America, pursuant to section 28 of the Mineral Leasing Act.[4] The petitioner applied and received this permit.

When Southern Counties Gas Company, the certified public utility in the area, learned of the contract, it filed a complaint against the petitioner in this case with the Public Utilities Commission. This complaint was based on section 1001 of the California Public Utilities Code, which stipulates that a certificate of public convenience and necessity must be acquired from the Commission before a pipeline can be built by any public utility.

Southern Counties claimed the petitioner had dedicated the pipeline to public use pursuant to the common carrier clause in the right of way permit secured from the federal government. Southern Counties further claimed that the petitioner had thereby made itself a public utility subject to the regulation of the Commission.

In an administrative hearing, the Public Utilities Commission found the petitioner to be a public utility and ordered it to obtain a certificate of convenience. The petitioner refused, and as a result, the Commission issued a cease and desist order. After receiving these two orders, the petitioner appealed to the supreme court.

The court unanimously held that both orders of the Commission be annulled, handling the question of dedication as it had done in regard to any other type of utility. The decision can be reduced to four main principles: 1) Dedication is required as a prerequisite of public utility regulation; 2) The petitioner had not dedicated its gas reserves to the public and therefore was not a public utility; 3) Section 1001 of the Public Utilities Code applies only to public utilities and, as the petitioner was not a public utility, it was not required to secure a certificate of convenience; 4) The right of way permit that the petitioner was required to obtain in order to cross federal land stipulated that it act as a common carrier. The court held that although the petitioner did have a common carrier obligation, this obligation did not subject it to regulation until it was actually called upon to transport gas to others. Nor did this obligation subject the petitioner's non-public operation of selling and delivering gas to Edison to regulation.

Dedication—A Consistent Requirement

Dedication, meaning devotion of services or property to the public use, has been consistently recognized by the courts as a requirement that must be established before the Commission gains jurisdiction over the corpora-

[4] 41 STAT. 449 (1920) as amended 49 STAT. 678 (1935), 67 STAT. 557 (1953), 30 U.S.C. § 185 (1958).

tion furnishing such service or property.[5] As long as a person or business uses its property for private purposes only and does not dedicate it to the public use, the public, even through the Commission, has no interest in it.[6] But if the property is dedicated, the public may insist on the right to have a voice in its regulation and control[7] subject to the owner's right to a reasonable profit and return.[8] This dedication entails regulation ". . . over rates (Pub. Util. Code, § 728), services (Pub. Util. Code, § 761), construction of plants and extensions thereof (Pub. Util. Code, § 1001), issuance of securities (Pub. Util. Code, § 816), and the disposing or encumbering of operative property (Pub. Util. Code, § 851)."[9]

Extent of Dedication Necessary

One of the basic issues before the court was to what extent must a utility dedicate its property to the public use before that utility may be subjected to the regulation of the Commission under the authority given it in the state constitution and statutes?[10] The court admitted that if this had been its first opportunity to interpret the pertinent laws, it would have serious doubts that the broad language used in these laws included the limitation of dedication as there was no reference made to dedication within the code. Dedication had originally been incorporated into the law to satisfy a constitutional question,[11] but that question is no longer in issue. However, since the codification of the original Public Utilities Act in 1911,[12] the legislature has repeatedly re-enacted the pertinent code sections of 207 and 216, defining "public" and "public utility" in substantially the same form[13] saying nothing of dedication even in light of judicial interpretation requiring dedication since 1912. This strongly suggests legislative intent in accord with the case holdings.

In addition, Public Utilities Code section 704 makes it unlawful for a foreign corporation to carry on the business of a public utility in California.[14] This would affect most of the oil corporations, including the petitioner, forcing them out of the state. It must be assumed that the legislature was aware of this situation. This supports legislative intent to require dedication. If this interpretation is to be changed after forty years of case au-

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[5] Pajaro Valley Storage Co. v. Public Util. Comm'n, 54 Cal. 2d —, 352 P.2d 721, 5 Cal. Rptr. 313 (1960); Thayer v. California Dev. Co., 164 Cal. 117, 128 Pac. 21 (1912).

[6] Associated Pipeline Co. v. Railroad Comm'n, 176 Cal. 518, 169 Pac. 62 (1917).

[7] Producer's Transp. Co. v. Railroad Comm'n, 176 Cal. 499, 169 Pac. 59 (1917); *aff'd*, 251 U.S. 228 (1919).

[8] Lyon & Hoag v. Railroad Comm'n, 183 Cal. 145, 190 Pac. 795 (1920).

[9] Richfield Oil Corp. v. Public Util. Comm'n, 54 Cal. 2d —, —, 354 P.2d 4, 11, 6 Cal. Rptr. 548, 555 (1960).

[10] See CAL. CONST. art. XII, § 23; art. XIV, § 1; CAL. PUB. UTIL. CODE §§ 216, 1001.

[11] Thayer v. California Dev. Co., 164 Cal. 117, 128 Pac. 21 (1912).

[12] Cal. Stat. 1911 (Ex. Sess.), ch. 14, §§ 1-88, pp. 18-64.

[13] Cal. Stat. 1915, ch. 91, § 2(bb), pp. 118-9; Cal. Stat. 1917, ch. 707, § 1(bb), pp. 1333-4; Cal. Stat. 1919, ch. 304, § 1(dd), p. 493; Cal. Stat. 1927, ch. 130, § 1(dd), pp. 248-9; Cal. Stat. 1933, ch. 784 § 1(dd), pp. 2088-9; Cal. Stat. 1937, ch. 896, § 1(dd), p. 2478; Cal. Stat. 1951, ch. 764, §§ 207, 216(a), pp. 2027, 2029.

[14] See Webster Mfg. Co. v. Byrnes, 207 Cal. 630, 280 Pac. 101 (1929).

thority, it seems that the legislature should take the action rather than the courts.

It therefore can be seen that this question was not original with this case, except as it pertained to a gas corporation. The requirement of a showing of dedication is a matter of settled law. Other states have the same requirement.[15]

In determining whether, in a specific instance, a corporation is a public utility several factors must be considered. The name "corporation" alone implies a public use and service to the public. The purpose for which the corporation was organized[16] and whether the corporation has condemned property to the public use must be examined.[17]

What Is Dedication?

The primary test of dedication is whether the services have been held out to the public in general on equal terms.[18] It need not be to all the public, but to any limited portion that can be serviced by the corporation in question. It must be distinguished from being ready to serve only particular individuals, either as accommodation to them or for other reasons peculiar to them.[19]

In a case similar to *Richfield,* a water company sold surplus water to the town of Sausalito under contract. The town then distributed the water to its inhabitants. The court held that the water company had not thus become a public utility, and that a single sale of part of its water was not a dedication which would ". . . convert the use into a public use in which others could share.[20]

It is not the use to which the consumer puts the service or commodity furnished that determines the character of the furnisher as a public utility, but the duty the furnisher has undertaken or owes to the public.[21] As shown in an Ohio case, no presumption of dedication arises merely because the services in question are of the nature usually related to public utility regulation.[22] Certainly a public utility is not immune from the competition of private business.[23] Dedication is not a trivial thing and can not be assumed unless there is unequivocal proof of such.[24] It has been said, however, that the necessary evidence may be inferred from the way in which a cor-

[15] Phoenix v. Kasun, 54 Ariz. 470, 97 P.2d 210 (1939); State *ex rel* Danciger v. Public Serv. Comm'n, 275 Mo. 483, 205 S.W. 36 (1918); Southern Ohio Power Co. v. Public Util. Comm'n, 110 Ohio St. 246, 143 N.E. 700 (1924).

[16] See Story v. Richardson, 186 Cal. 162, 198 Pac. 1057 (1921).

[17] Lamb v. California Water & Tel. Co., 21 Cal. 2d 33, 129 P.2d 371 (1942).

[18] Allen v. Railroad Comm'n, 179 Cal. 68, 175 Pac. 466 (1918).

[19] S. Edwards Associates v. Railroad Comm'n, 196 Cal. 62, 235 Pac. 647 (1925).

[20] Marin Water Co. v. Town of Sausalito, 168 Cal. 587, 596, 143 Pac. 767, 771 (1914).

[21] Pinney & Boyle v. Los Angeles Gas & Elec. Corp., 168 Cal. 12, 141 Pac. 620 (1914).

[22] Southern Ohio Power Co. v. Public Util. Comm'n, 110 Ohio St. 246, 143 N.E. 700 (1924).

[23] Commercial Communications v. Public Util. Comm'n, 50 Cal. 2d 512, 327 P.2d 513 (1958).

[24] Richardson v. Railroad Comm'n, 191 Cal. 716, 218 Pac. 418 (1923).

poration handles its property. If it shows a holding out to the public on equal terms, that is sufficient.[25]

There seems to be no way to come to the conclusion that the petitioner dedicated the gas reserves in issue. By refusing to sell to many industries who had solicited the petitioner for gas and by dealing only with a restricted few, under individual contracts, it in no way showed a willingness to devote its reserves to the public use. In fact, this is evidence to the contrary.[26]

It must be realized that a corporation may do business partly on a private basis and partly as a public utility. In such circumstances only the part run as a utility is under the Commission's jurisdiction.[27] For even though a corporation runs partly as a public utility, it can not be compelled to dedicate all of its business, for that is beyond the police power of the state.[28]

Effect of Common Carrier Clause

The final contention in *Richfield* was that the common carrier clause in the permit showed a dedication of the pipeline by the petitioner, and since common carriers are one of the defined public utilities,[29] the petitioner should be under the regulation of the Commission as to the use of the pipeline.

"A common carrier is one who openly professes to carry for hire the goods of all who choose to employ him. . . . [A] private carrier is one who, without being engaged in the business generally, undertakes to carry goods for hire in a particular case."[30] A similar definition was applied in 1951 when the California Supreme Court said that evidence of unequivocal intention to dedicate its property to a public use must be shown before a carrier's service establishes it as a common carrier.[31] It was held that the common carrier condition in the permit showed *evidence* of dedication.

However, as to the *Richfield* situation, the California statutes do not prevent the operation and use of a pipeline in pursuance of the contract with Edison even though the petitioner has an obligation to transport gas to others.[32] "[The petitioner] does not seek to use its pipeline for the common carriage of gas and it may never be called upon to do so. . . . [A]t most it has evidenced a willingness to act as a common carrier when and if it is called upon to do so."[33] The principle of California public utility law that a corporation will not be regulated until it has actually served the public[34] was followed closely. The Public Utilities Act is not concerned with a cor-

[25] Thayer v. California Dev. Co., 164 Cal. 117, 128 Pac. 21 (1912).

[26] Souza v. Public Util. Comm'n, 37 Cal. 2d 539, 233 P.2d 537 (1951).

[27] Lamb v. California Water & Tel. Co., 21 Cal. 2d 33, 129 P.2d 371 (1942).

[28] Del Mar Water Co. v. Eshleman, 167 Cal. 666, 140 Pac. 591 (1914).

[29] CAL. PUB. UTIL. CODE §§ 211, 216.

[30] 1 MOORE, CARRIERS 20 (2d ed. 1914).

[31] Samuelson v. Public Util. Comm'n, 36 Cal. 2d 722, 227 P.2d 256 (1951).

[32] California Water & Tel. Co. v. Public Util. Comm'n, 51 Cal. 2d 478, 334 P.2d 887 (1959).

[33] Richfield Oil Corp. v. Public Util. Commn, 54 Cal. 2d ——, ——, 354 P.2d 4, 17, 6 Cal. Rptr. 548, 561 (1960).

[34] California Water & Tel. Co. v. Public Util. Comm'n, *supra* note 32.