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## Public Utilities

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In the case of *Central Storage Warehouse Co. v. Pickering*,<sup>8</sup> the Supreme Court of Ohio had held that a warehouse receipt containing a condition limiting liability was valid when the transfer of possession of the chattel was contemporaneous with the delivery of the receipt, although the bailor was in fact unaware of this condition. However the *Pickering* case has now been limited to its facts by the holding in *Gram Dealers National Fire Ins. Co. v. Unon Co.*<sup>9</sup> In that case the delivery of the receipt containing the limitation of liability took place twenty days after the bailment. The supreme court refused to apply the limitation of liability for the reason that without contemporaneous delivery of the receipt and chattel, the receipt might constitute a limitation of liability with reference to property which had already disappeared.

Of possible greater long run importance was the court's opinion that a warehouse receipt is a muniment of title and if it be extended beyond this purpose into a contract, then such a contract to be enforceable requires the knowledge and assent to its terms by all parties.<sup>10</sup>

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## PUBLIC UTILITIES

### *Public Utility Rates — Emergency Orders*

Several novel issues of law were disposed of by the supreme court in two companion cases decided during 1953. In *Cambridge v. Pub. Utilities Comm'n*<sup>1</sup> and *Jackson v. Pub. Utilities Comm'n*<sup>2</sup> the court held that the necessity for additional revenues in order to earn sufficient return to pay interest on its bonded indebtedness and dividends on its preferred stock constituted a sufficient basis for the granting by the Public Utilities Commission of an application of a telephone company for emergency rates. The court quickly disposed of protests by municipalities served by the telephone company to the effect that increased rates for such purposes could as well have been obtained by application under other statutes for permanent rate increases. The court relied on Oklahoma,<sup>3</sup> Minnesota,<sup>4</sup> and federal<sup>5</sup> decisions and refused to follow a contrary New Hampshire decision.<sup>6</sup>

The court also ruled that telephone companies' rates were properly established on a basis wider than the individual exchange, or even the in-

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an automobile which he had encumbered by virtue of his lien without evidencing the same on the certificate of title is void. See note 3, *supra*.

<sup>8</sup> 114 Ohio St. 76, 151 N.E. 39 (1926).

<sup>9</sup> 159 Ohio St. 124, 111 N.E.2d 256 (1953)

<sup>10</sup> OHIO REV. CODE § 1323.04 (OHIO GEN. CODE 8459) "A warehouseman may insert any terms and conditions in a receipt issued by him. "

dividual municipality, and that while electric, gas and water companies are required under the statutes to obtain a municipal franchise to operate in any municipality, a telephone company is not, since rates are to be established primarily upon a company-wide basis.

### **Public Utility Rates — Increases May Not Be Made Conditional on Improvement of Services**

An attempt by the Public Utilities Commission to condition an increase in the rates to be charged by a telephone company upon improvement by the utility of its services and facilities was held by the supreme court to be beyond any statutory authority of the Commission in *Elyria Tel. Co. v. Pub. Utilities Comm'n.*<sup>7</sup> Conceding that the statutes<sup>8</sup> give the Commission the power to compel the utility to give adequate service and to improve services and facilities, the court nevertheless found no statutory authority to make the rates conditional upon the improvement, saying "adoption of such an attitude would hamstring the utility."<sup>9</sup> It likewise ruled that the Commission had no power to require that its approval be secured before the company could declare and pay dividends. The court distinguished the case of *Ohio Cent. Tel. Corp. v. Pub. Utilities Comm'n.*<sup>10</sup> which held that the Commission had the power to prohibit the payment of dividends to stockholders when there were neither earnings nor surpluses from which such payments might be made. The basis of the distinction was that the Elyria company did have a large earned surplus out of which to make such payments, and that " a utility conducts a business so closely related to the public interest that it is subject to extensive control and regulation. Nevertheless, it is still an independent corporation and possesses the right to regulate its own affairs and manage its own business, unless in doing so a situation develops which is inimical to the public interest."<sup>11</sup>

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<sup>7</sup> 159 Ohio St. 88, 111 N.E.2d 1 (1953).

<sup>8</sup> 159 Ohio St. 123, 111 N.E.2d 7 (1953).

<sup>9</sup> *Southwestern Bell Tel. Co. v. State*, 202 Okl. 291, 214 P.2d 715 (1949); *Oklahoma Gas & Elec. Co. v. State Corp. Comm'n.*, 83 Okl. 281, 201 Pac. 505 (1921).

<sup>4</sup> *Application of Minneapolis & S. P. Ry.*, 228 Minn. 435, 37 N.W.2d 533 (1949).

<sup>5</sup> *Prendergast v. New York Tel. Co.*, 262 U.S. 43, 43 Sup. Ct. 466 (1923)

<sup>6</sup> *New England Tel. & Tel. Co. v. State*, 95 N.H. 58, 57 A.2d 267 (1948)

<sup>7</sup> 158 Ohio St. 441, 110 N.E.2d 59 (1953).

<sup>8</sup> OHIO REV. CODE §§ 4909.15, 4905.26, 4905.37, 4905.38 (OHIO GEN. CODE §§ 614-23, 614-21, 614-27, 614-28).

<sup>9</sup> *Elyria Tel. Co. v. Pub. Utilities Comm'n.*, 158 Ohio St. 441, 447, 110 N.E.2d 59, 63 (1953).

<sup>10</sup> 127 Ohio St. 556, 189 N.E. 650 (1934).

<sup>11</sup> 158 Ohio St. 441, 447, 448, citing *Cleveland v. Pub. Utilities Comm'n.*, 102 Ohio St. 341, 131 N.E. 714 (1921).