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Highways--Reasonable Highway Uses--Erection of Screens to Hide Billboards

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the elimination of this trap into which so many blunder with disastrous consequences seems sustained by justice and common sense. Yet one cannot but regret that the court did not see fit to overrule its previous decisions in express terms.

—DONALD M. HUTTON.

HIGHWAYS — REASONABLE HIGHWAY USES — ERECTION OF SCREENS TO HIDE BILLBOARDS. — The Superintendent of Public Works of New York State has evidently taken to heart the amusing satire by Stephen Leacock depicting George Washington marching today through New Jersey and across the Delaware to Philadelphia, guided by modern billboards.[1] And the Superintendent's means of remedying the situation is indeed a novel one. Land adjoining a highway had been leased for the purpose of erecting a billboard, and immediately the state erected a screen or board upon the highway right of way to hide the billboard. In a suit to compel the state to remove the screen the state defended upon the ground that its object was "to prevent motorists from seeing the billboard and thus afford no reason for their taking their eyes off the wheel". The court, however, found that this was not the purpose of the screen, and, since it was not erected for a highway purpose, compelled the state to remove it.[2]

Whether the state has a fee in the right of way or only an easement, modern cases seem to hold that the adjoining property owner is entitled to compensation, if the highway is used for a public purpose, but a different purpose than that for which the property was originally taken. In either case the state takes only for the particular purpose set out at the beginning.[3] As the taking of

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excusat, is in regard to the public; ignorance cannot be pleaded in excuse of crimes, but does not hold in civil cases."

Martindale v. Falkner, 2 C. B. 719 (1846), Maule, J., "There is no presumption in this country that every person knows the law, it would be contrary to common sense and reason if it were so."

Thayer, *Presumptions and the Law of Evidence* (1889) 3 HARV. L. REV. 141, 165: "Many of these maxims and ground principles get perversely and inaccurately expressed in this form of a presumption, as when the rule that ignorance of the law excuses no one is put in the form that everyone is presumed to know the law."

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[1] 155 HARPER'S MAGAZINE 382 (1927).

[2] Perlmutter v. Greene, 249 N. Y. Supp. 495 (1931).

[3] Spencer v. R. R. Co., 23 W. Va. 406 (1884); Davis v. Spragg, 72 W. Va. 672, 79 S. E. 652 (1913); Barney v. Keokuk, 94 U. S. 324, 24 L. Ed. 224 (1877). See DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) § 1136.

private property for other than public uses is denied, the erection of the screen for other than a highway, or other public purpose would be wrongful.[4] But, regardless of whether the state owned the highway in fee or had only an easement, the screen would violate such abutter's rights as means of access and right of view, which can be interfered with only by reasonable highway regulations.[5]

The anxiety of the state to remove billboards is to be commended, but the means employed to remove them is perhaps not so praiseworthy, inasmuch as it creates two undesirable structures instead of one. A better approach to the difficulty would seem to be by billboard legislation. The modern trend of decisions upon zoning ordinances and billboard legislation would lead one to believe that at least a mild legislative enactment regulating the place and kind of billboards erected and placing a license tax upon the same would be sustained.[6] Courts may still refuse to give verbal support to aesthetic considerations and hunt for fanciful and fictitious grounds to sustain such legislation, but it seems that the time is not far ahead when courts will openly recognize that some obnoxious sights are just as objectionable as obnoxious sounds or odors and will then go the limit in sustaining legislation directed primarily at aesthetic purposes.

—JOHN HAMPTON HOGE.

INSANE PERSONS — RECEIVERS. — July 1, 1931, W. E. Templeman was adjudged of unsound mind and committed to an asylum. From this judgment he appealed. There was a refusal by the proper authority to appoint a guardian for Templeman until the appeal had been decided. Pending its decision his eleven year old daughter, on July 8, 1931, filed a petition to have the court appoint a receiver for her father's estate. She alleged that the insane man's estate was being dissipated and was falling into

[4] Secombe v. Milwaukee Ry. Co., 23 Wall. 108, 23 L. Ed. 67 (1874); Hentch v. Pritt, 67 W. Va. 270, 57 S. E. 808 (1910).

[5] McCaffrey v. Smith, 41 Hun. (N. Y.) 117 (1886); Hyde v. Minnesota Ry., 29 S. D. 220, 136 N. W. 92 (1912); See DILLON, *op. cit. supra* n. 3, §§ 1126, 1166, 1167, 1245; ELLIOTT: ROADS AND STREETS (4th ed. 1926) §§ 882, 883.

[6] See Goodrich, *Billboard Regulation* (1928) 17 CAL. L. R. 120.