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Public Utilities--Insufficient Supply of Gas as Ground for Relief from Duty of Natural Gas Company to Supply an Applicant for Service``

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mobile drivers are virtually insurers of persons working on the highway. In a situation such as was found in the principal case the court says ordinary care is not enough and that degree of care is necessary which will protect the workman from injury. In short a driver of an automobile must proceed at his peril if there are workmen on the highway. In the absence of statute the doctrine of absolute liability is very narrow. Burdick, Law of Torts, 536-46. Apparently the court would not apply the doctrine of the principal case except in situations of extreme hazard. But just how much must the situation change in order to necessitate the adoption of another standard of care? While the doctrine according to the principal case is confined to cases of automobile drivers on the one hand and workmen on the highway on the other, one cannot help sensing the possibility of its extension. The pronouncement seems unfortunate, especially since what is no doubt a correct result could have been reached by applying the standard of care of the reasonable man under the circumstances.

—Arlos Jackson Harbert.

Public Utilities — Insufficient Supply of Gas as Ground for Relief from Duty of Natural Gas Company to Supply an Applicant for Service.—A and B are natural gas companies located in same territory. C is a brick company. B had been, and is, furnishing C with adequate supply of gas, but at a higher rate than that charged by A, whose principal market is in Ohio and Kentucky. C seeks to compel A to furnish it with supply of gas, in order to get benefit of A's lower rate. From an order of the Public Service Commission requiring A to furnish C with a supply of gas, A appeals to the Supreme Court of Appeals, and B intervenes in order to protect its interest as a public service corporation. Held, to compel a public utility corporation at great expense to duplicate another's satisfactory supply of gas, not called for by circumstances, would be improper, and the court will annul an unreasonable order of the Public Service Commission requiring duplication of service of supplying gas. United Fuel Gas Company v. Public Service Commission, et al., 138 S. E. 388 (W. Va. 1927). Hatcher, Pres., and Woods, J, dissented.
Judge Hatcher's dissenting opinion was based on the following grounds: (1) There was no duplication of satisfactory service involved, for "satisfactory service" includes price as well as quantity supplied, and service should not be held satisfactory regardless of the price charged thereafter. (2) A admits having surplus gas, but claims it is not enough to supply C with all the gas C needed. This claim is no answer to C's application, for a natural gas company is not relieved from furnishing gas to an applicant because it has an insufficient supply of gas properly to supply its present customers. (3) The cost of A to make the desired connection would be only seven hundred fifty-dollars and the order of the Public Service Commission did not require A to furnish C with all the gas C needed, nor would it result in the additional expense claimed by A. It would follow from (2) that A's supply of gas must be divided proportionately among its customers. (4) The interests of consumer as well as producer must be considered along with the policy in this state against ruinous competition. The present note will be confined to a discussion of the second proposition stated by Judge Hatcher. The doctrine that a natural gas company is not relieved from furnishing gas to an applicant because it has an insufficient supply of gas properly to supply its present customers, is stated in the case of the State ex rel. Wood v. Consumers Gas Trust Co., 157 Ind. 345, 61 N. E. 674, 55 L. R. A. 245 (1901). It was followed by Indiana Natural Gas and Oil Company v. State ex rel. Armstrong, 162 Ind. 690, 71 N. E. 133. To the same effect see also Public Service Commission, Second District, et al. v. Iroquois Natural Gas Company, 179 N. Y. Supp. 230 (1919). Indeed, there seems to be no decided case contra to the principle under discussion. Exception must be made, however, in cases where water for irrigation purposes is supplied by a corporation (which has acquired a prior right thereto) to consumers. In such cases it is held that an insufficient supply of water to supply present customers properly, excuses the corporation from complying with the request of a later applicant for service. Brown, et al. v. Farmers' High Line Canal and Reservoir Co., 26 Colo. 66, 56 Pac. 183; 1 Wyman Public Service Corporations, §652 and cases therein cited. The rule in natural gas cases is severely criti-
cized by the best text authority. See 1 Wyman Public Service Corporations, §653, where it is said, "Logical though it may be, it (the rule for natural gas) seems to the writer to be lacking in appreciation of the situation as a whole. A rule which may result in satisfactory service to none, not even to the applicant in question is hardly consistent with public service for all. Certainly where the supply now available is not sufficient to meet the proper demands of present customers, it would seem that later applicants could not demand the reduction of the taking of older customers." See also an article by Thomas P. Hardman in 26 W. Va. L. Quar. 224, 231, where the question is discussed with reference to the constitutional right of a state to prohibit the exportation of its natural resources. It will be noticed that the natural gas rule is based on the theory of unjust discrimination. Admitting that there is discrimination in favor of prior consumers, should the rule against discrimination be invoked? It is apparent that such a rule is opposed to the common law theory that a public utility must render adequate service. To require a public utility to render service to tardy applicants, when the supply is sufficient for present customers only, results in inadequate service for all. Such a rule of law seems unjust, unreasonable, and uneconomic.

—Hugh R. Warder.

Principal and Agent—Liability of Principal—Scope of Employment.—The plaintiff, while shopping in the store of the defendants, was seen by a clerk to fold up some small dresses, and to attempt to make away with them. The clerk brought her back, rescued the goods, and turned her over to the manager. No further search was made, but the manager detained the plaintiff while awaiting the arrival of an officer for whom he had sent. The plaintiff, attempting to escape, gained the sidewalk, but the manager pursued her, and by shoving her, forced her back into the store. The plaintiff alleges that she was injured by the acts of the manager, and asks damages for said injuries, as well as for nervousness suffered by her daughter, who had accompanied her, in consequence of such acts. Held, that the defendants were not liable for these acts of the agent,