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NEW PUBLIC UTILITIES—To use the familiar phraseology of Lord Hale, when does a business "cease to be *juris privati* only" and become "affected with a public interest,"[1] so that it may be regulated as a public service? Before attempting to answer this question, which has been variously answered by various authorities and is not yet definitely settled,[2] it will be well to remember that all businesses, private and public, are, of course, subject to governmental regulation of a sort. But there is in one respect an important difference between the sort of governmental regulation to which private businesses may be constitutionally subjected and the sort of governmental regulation to which public businesses may be constitutionally subjected. The difference is not merely one of degree; it is one of kind. Generally speaking, governmental regulations in regard to private business are negative in character; govern-

[1] *De Portibus Maris*, 1 HARG. LAW TRACTS 78.

[2] See Clarksburg Light & Heat Co. *v.* Public Service Commission, 84 W. Va. 638, 100 S. E. 551 (1919). See, discussing the point and taking opposite views: Wyman, "The Law of Public Callings as a Solution of the Trust Problem", 17 HARV. L. REV. 156, 217; Burdick, "The Origin of the Peculiar Duties of Public Service Companies," 11 COL. L. REV. 515, 616, 743. *Cf.* 31 YALE L. J. 75-78. See Hough, J., in Marcus Brown Holding Co. *v.* Feldman, 269 Fed. 306, 317 (1920).