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# Public Utilities -- When a Utility May Withold or Withdraw Service For Reasons of Credit

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negligence, as well as for homicide resulting from wanton, wilful or criminal negligence.[27]

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**Public Utilities—When a Utility May Withhold or Withdraw Service For Reasons of Credit.**

Where, upon the payment of the usual fee, a telephone company refused to furnish its service without an additional deposit, on the ground that plaintiff was admittedly a bad credit risk, *held,* the company must serve the plaintiff without the additional security on the same terms as it serves other subscribers.[1]

It is almost universally conceded that a public utility may withdraw and withhold its service for nonpayment of a recent and just bill, since collection by legal process is practically prohibitive. And this is so even though the consumer has some counterclaim against the company.[2] But although the bill be legitimate, where the sum is owed by a public agency, the corporation may not use the summary method employed in collecting its debts from delinquent individuals, since here mandamus will lie to compel the proper official to pay the bill.[3] Another instance where the courts will enjoin a public utility from withholding service for nonpayment of a recent bill is where the refusal to pay is on the ground that its service has been inadequate.[4] And where the bill is *bona fide* in dispute, the company may not refuse to serve the consumer until such bill is paid.[5] The courts are very reluctant to permit the corporation to be its own judge and jury

[27] Michael v. Western & Atlantic R. Co., 165 S. E. 37, 43 (Ga. 1932).

[1] Horton v. Interstate Tel. & Tel. Co., 202 N. C. 610, 163 S. E. 694 (1932). The court explains its decision on the ground that the rule requiring an additional deposit by bad risks had never been approved by the Corporation Commission. It takes no definite stand, but intimates in a nebulous manner, that in the absence of such fact, it might have reached a contrary result.

[2] Barrett v. Broad River Power Co., 146 S. C. 85, 143 S. E. 650 (1928); Central La. Power Co. v. Thomas, 145 Miss. 352, 110 So. 673 (1927); Buffalo County Tel. Co. v. Turner, 82 Neb. 841, 118 N. W. 1064 (1908); Irvin v. Rushville Co-operative Tel. Co., 161 Ind. 524, 69 N. E. 258 (1903).

[3] Board of Education v. Richmond, 137 N. Y. Supp. 62 (1912) (water supply in a school); People *ex rel.* Johnson v. Barrows, 124 N. Y. Supp. 270 (1910) (water supply of public park).

[4] Mays v. Hutchinson, P. U. R. 1931B 104 (Pa. 1930); Case v. Meadow Lawn Tel. Co., P. U. R. 1929A 421 (Minn. 1928); State *ex rel.* Payne v. Kuloch Tel. Co., 93 Mo. App. 349, 67 S. W. 684 (1902); McEntee v. Kingston Water Co., 165 N. Y. 27, 58 N. E. 785 (1900).

[5] O'Neal v. Citizen's Pub. Service Co., 157 S. C. 320, 154 S. E. 217 (1930); Ala. Water Service Co. v. Harris, 221 Ala. 516, 129 So. 5 (1930); Dodd v. City of Atlanta, 154 Ga. 33, 113 S. E. 166 (1922); Poole v. Paris Mt. Water Co., 81 S. C. 438, 62 S. E. 874 (1908).

and coerce the recalcitrant one into submission by denying him service. But if the consumer, refusing to pay the bill because of his *bona fide* belief that it is unjust, has his service discontinued, he is not entitled to damages merely because of his belief, if it is proved that the bill is in fact correct.[6] Nor may a utility withdraw its service for nonpayment of an unreasonable,[7] discriminatory,[8] or obviously excessive charge.[9]

Some courts hold that the payment of arrearages for service at the same place is not required and the only condition precedent to a right to have the service is a tender for it.[10] Others say that the payment of arrearages may be demanded before service is extended.[11] But where an old bill has been passed over and later ones accepted, the company is said to have waived its right to discontinue service for nonpayment.[12]

It is generally held that service cannot be refused at one place because the consumer is in arrears at another place at the same time[13] or because he was in arrears at a different place.[14] Nor can the company urge another's default as an excuse for withholding

[6] Kentucky Utilities Co. v. Warren Ellison Cafe, 231 Ky. 538, 21 S. W. (2d) 976 (1929).

[7] Barrell v. Lake Forest Water Co., 191 Ill. App. 269 (1915); Ball v. Texarkana Water Corp., 127 S. W. 1068 (Tex. Civ. App. 1910); Borough of Washington v. Washington Water Co., 70 N. J. Eq. 254, 62 Atl. 390 (1905).

[8] Gordon & Ferguson v. Doran, 100 Minn. 343, 111 N. W. 272 (1907).

[9] Pond v. New Rochelle Water Co., 183 N. Y. 330, 76 N. E. 211 (1906); Horsky v. Helena Consolidated Water Co., 13 Mont. 229, 33 Pac. 689 (1893).

[10] Johnson v. Carolina Gas & Electric Co., 106 S. C. 447, 91 S. E. 734 (1917); Taylor v. N. Y. Tel. Co., 160 N. Y. Supp. 865 (1916); Danaher v. S. W. Tel. & Tel. Co., 94 Ark. 533, 127 S. W. 963 (1910); S. W. Tel. & Tel. Co. v. Luckett, 127 S. W. 856 (Tex. Civ. App. 1910); Crumley v. Watauga Water Co., 99 Tenn. 420, 41 S. W. 1058 (1897).

[11] Bailey v. Interstate Power Co., 209 Iowa 631, 228 N. W. 644 (1930). State *ex rel.* Latshaw v. Board of Water & Light Commissioners, 105 Minn. 472, 117 N. W. 827 (1908).

[12] Crumley v. Watauga Water Co., *supra* note 10; Wood v. City of Auburn, 87 Me. 287, 32 Atl. 906 (1895). *Contra:* Mackin v. Portland Gas Co., 38 Ore. 120, 61 Pac. 134 (1900); People *ex rel.* Kennedy v. Manhattan Gaslight Co., 45 Barb. 136 (N. Y. 1865).

[13] Texas Central Power Co. v. Perez, 291 S. W. 622 (Tex. Civ. App. 1927) (a store owner in debt for outside lights); Merill v. Livermore Falls Light & Power Co., 117 Me. 523, 105 Atl. 120 (1918) (a business man in default at his residence); Gaslight Co. of Baltimore v. Colliday, 25 Md. 1 (1866) (owner of several pieces of property in default on one).

[14] Miller v. Roswell Gas & Elect. Co., 22 N. M. 594, 166 Pac. 1177 (1917); Benson v. Paris Mt. Water Co., 88 S. C. 351, 70 S. E. 897 (1911); Hatch v. Consumers' Co., 17 Idaho 204, 104 Pac. 670 (1909); Mackin v. Portland Gas Co., *supra* note 12; Lloyd v. Washington Gaslight Co., 1 Mackey 331 (D. C. 1881). *Contra:* Clark v. Utica Gas & Electric Co., 231 N. Y. Supp. 308 (1928); Jones v. Mayor of Nashville, 109 Tenn. 550, 72 S. W. 985 (1903).

service even though such other person is the consumer's husband[15] or wife.[16] And in the absence of express statutory provision making a service charge a lien on the premises, a new customer cannot be denied service because of the default of the landlord[17] or previous tenant.[18]

Where it is impossible to serve a prospective customer without at the same time supplying one not entitled to service because of nonpayment, the utility is released from its duty.[19] The opposite view, however, has been recognized; and one court has held that the lessee of part of a room, where he applies for it in good faith, is entitled to service, although the lessor, occupying the remainder of the room, is in default.[20]

When the question of the general credit of the person is involved and payment in advance is not required by the company, some courts have said that a bad financial risk would justify the company in asking for security before extending service.[21] And demanding payment in advance from one financially irresponsible is permissible even when such payment is not demanded of others.[22] But it has been held, in accord with the principal case, that where a person offered to pay in advance, a company could not withhold service because of that person's credit rating.[23]

[15] Vanderburg v. Kansas City Gas Co., 126 Mo. App. 600, 105 S. W. 17 (1907).

[16] Cumberland Tel. & Tel. Co. v. Hobart, 89 Miss. 252, 42 So. 349 (1906).

[17] Ala. Water Co. v. Knowles, 220 Ala. 61, 124 So. 96 (1929).

[18] Carnaggio Bros. v. City of Greenwood, 142 Miss. 885, 108 So. 141 (1926); Farmer v. Nashville, 127 Tenn. 509, 156 S. W. 189 (1912); City of Houston v. Lockwood Inv. Co., 144 S. W. 685 (Tex. Civ. App. 1912); Nourse v. City of Los Angeles, 25 Cal. App. 384, 143 Pac. 801 (1914); Covington v. Ratterman, 128 Ky. 336, 108 S. W. 297 (1908) (vendor's debt). Where, however, there is a statutory provision, it does create a lien on the land. Howe v. Orange, 70 N. J. Eq. 648, 62 Atl. 777 (1906) (grantor's default); Gerard L. Ins. Co. v. Philadelphia, 88 Pa. 393 (1879) (purchaser of land at sheriff's sale).

[19] Birmingham Waterworks Co. v. Brooks, 16 Ala. App. 209, 76 So. 515 (1917); Frothingham v. Benson, 44 N. Y. Supp. 879 (1897). The company must serve a person so situated, upon the installation of a separate connection.

[20] Gaines v. Charleston Light & Water Co., 104 S. C. 136, 88 S. E. 378 (1916); Ginnings v. Meridian Waterworks Co., 100 Miss. 507, 56 So. 450 (1911).

[21] Phelan v. Boone Gas Co., 147 Iowa 626, 125 N. W. 208 (1910). Requiring a deposit or guarantee of a bad financial risk is a reasonable regulation. *Contra:* Barriger v. Louisville Gas & Electric Co., 196 Ky. 268, 244 S. W. 690 (1922).

[22] Southwestern Tel. & Tel. Co. v. Danaher, 238 U. S. 482, 35 Sup. Ct. 886, 59 L. ed. 1419 (1915); Allen v. Cape Fear & Yadkin Valley Ry. Co., 100 N. C. 397, 6 S. E. 105 (1887). Although it implies a charge of impaired credit, a common carrier has the right to demand the prepayment of charges from one, even where it extends credit to others.

[23] O'Neal v. Citizen's Pub. Service Co., *supra* note 5.

In North Carolina, while previously no situation has arisen comparable to the principal case, the court has strongly inclined towards upholding and enforcing the public duty of the utility to serve all similarly situated on equal terms.[24] Was the plaintiff in the principal case "similarly situated?" It has further been held that the company may refuse to serve those who will not comply with its reasonable rules and regulations.[25] Was not the requirement for an additional deposit "reasonable" under the circumstances?

It would seem that the court has displayed extraordinary solicitude for the subscriber. The decision is partly justified by the requirement of payment in advance, but how is the company to protect itself against nonpayment of additional charges, such as long distance calls?

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**Real Property—Adverse Possession of Separate Interests in Land.**

The plaintiff occupied land by adverse possession under color of title for the statutory period. The defendant claimed the timber growing on the land, basing his claim on a recorded timber deed given prior to the time the plaintiff took possession of the land. *Held:* The adverse possession of the land did not conclude the prior lessee of the timber upon the land.[1]

Under both the common law and the Georgia Code "the right of the owner of lands extends downward and upward indefinitely."[2] Yet, there may be ownership in fee of several distinct interests in connection with a single tract of land. One person may own the surface of the land, another the buildings, another the timber growing on the land, and still another the minerals beneath the surface.[3] Therefore, one having title to the surface may have valid claims as-

[24] Griffin v. Goldsboro Water Co., 122 N. C. 206, 30 S. E. 319 (1898); Clinton-Dunn Telephone Co. v. Carolina Tel. & Tel. Co., 159 N. C. 8, 74 S. E. 636 (1912); S. & S. Ry. Co. & N. C. Pub. Service Co. v. So. Pr. Co., 180 N. C. 422, 105 S. E. 28 (1920).

[25] Woodley v. Carolina Tel. & Tel. Co., 163 N. C. 284, 79 S. E. 598 (1913).

[1] McNeill v. Daniel, 164 S. E. 187 (Ga. 1932).

[2] 2 BL. COMM. 18; GA. CODE ANN. (Michie, 1926) §3617.

[3] Fox v. Pearl River Lumber Co., 80 Miss. 1, 31 So. 583 (1902); Walters v. Sheffield, 78 Fla. 505, 78 So. 539 (1918).