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GAS AND WATER COMPANIES: THEIR RELATIONS WITH CONSUMERS.

Their obligation to supply: It was held in England as far back as 1810 that the owners of the only bonded wine warehouse in London, could not refuse to receive goods upon the proffer of reasonable hire and reward.

The ground was taken by Lord ELLENBOROUGH, C. J., "that if, for a particular purpose, the public have the right to resort to the premises of an individual and make use of them, and he have a monopoly of them for that purpose, if he will take the benefit of that monopoly, he must as an equivalent perform the duty attached to it on reasonable terms."

And the important point was made, that if there were other licensed warehouses, it would not cease to be a monopoly of the privilege of bonding, if the rights of the public were still narrowed and restricted to particular warehouses, though they might be in the hands of several parties: *Allnut* v. *Inglis*, 12 East. 527; *Bolt* v. *Stennett*, 8 Term Rep. 606. On the other hand, numerous English cases of later date are to be found, taking the opposite position, and they have held that the manufacture and sale of gas and the supplying of water, in the lack of statutory requirements, may be prosecuted or discontinued at the will of the party engaged in it. That the relations between the supply company and the consumer originate in the contract between them and that their rights and obligations are controlled entirely by the stipulations of such contract. And as "the one

may refuse to take gas or water, so may the other refuse to supply it." And furthermore, it has, in several cases, been laid down, that such companies should not be subjected to duties or obligations that are not binding upon the manufacturers and vendors of other commodities: *Pudsey Coal Co.* v. *Bradford*, L. R. 15 Eq. 167; *Houlgate* v. *Surrey Consumers' Gas Co.*, 8 Gas. J. 261; *The Hoddesdon Gas and Coke Co.* v. *Haselwood*, 6 Com. B. N. S. 238; *Weale* v. *West Middlesex Water Works Co.*, 1 J. & W. 358. The earlier American decisions take the same view: *McCune* v. *Norwich City Gas Co.*, 30 Conn. 521; *In re N. Y. Central R. R. Co.* v. *M. G. L. Co.*, 63 N. Y. 334; *TenEyck* v. *The Del. and Rar. Canal Co.*, 18 N. J. L. 204; *Bonaparte* v. *Camden and Amboy R. Co.*, 1 Bald. 222; *Tinsman* v. *The Belvidere Del. R. Co.*, 26 N. J. L. 172; *Commonwealth* v. *Lowell Gas L. Co.*, 12 Allen, 75.

In one case the court was urged to assert the doctrine that gas companies like common carriers and inn-keepers, were bound to accommodate the public, but refused on the ground that the lack of precedents upon the subject could only be based upon the strong presumption that there was no principle of law upon which such a view could be supported. Distinction was, however, made between cases where companies held out inducements to the public for patronage and where they did not. And it was intimated, that when such was the case, a person could recover damages from a company who refused to supply his needs: *Paterson G. L. Co.* v. *Brady*, 27 N. J. L. 245.

The more recent decisions in this country, however, establish the doctrine that it is mandatory upon corporations of this sort to supply one and all without distinction: *Gas Light Co.* v. *Calliday*, 25 Md. 1; *Shepard* v. *Milwaukee G. L. Co.*, 6 Wis. 539; *Williams* v. *Mutual Gas Co.*, 52 Mich. 499; *McCrary* v. *Beaudry*, 67 Cal. 120; *Lloyd* v. *Gas Light Co.*, 1 Mackay, 331; *Price* v. *Riverside L. & I. Co.*, 56 Cal. 431; *The People* v. *Manhattan G. L. Co.*, 45 Barb. 137; *Lumbard* v. *Stearns*, 4 Cush. 60; *Dayton* v. *Quigley*, 29 N. J. Eq. 77.

It has been observed in a number of cases, that the fact of such companies having the monopoly of supplying certain localities, was the prime reason why they should be compelled to accept indiscriminate patronage, but the question may well

be asked, Should not the same rule apply when several companies supply the same community?

It would seem so, within reasonable bounds, for as has been heretofore noted, such was the position taken by Lord ELLENBOROUGH, years ago, in a case which has since been many times cited with the greatest respect: *Allnut* v. *Inglis*, 12 East. 527.

The leading American case in point is that of *Shepard* v. *The Milwaukee Gas Light Co.*, 6 Wis. 539. The company had the exclusive right of supplying the city of Milwaukee with gas. The plaintiff, a merchant doing business on a street containing one of the defendant's mains, fitted up his establishment with the necessary pipes and fixtures for lighting the same with gas. He applied to the said company for a supply, tendering at the same time, five dollars in advance payment therefor. He was required as a condition precedent, to sign the printed "rules and regulations" of the company. He declined to do so. The company refused to waive the point, and suit was brought to recover damages suffered by the plaintiff because of such refusal to supply. After discussing the question at great length, the court decided that a company of this sort is bound to furnish a supply under such reasonable regulations as it may choose to impose. To act capriciously as to who should be supplied, would, of course, be an abuse of a company's franchise: *Lumbard* v. *Stearns*, 4 Cush. 60; *Price* v. *The Riverside L. & I. Co.*, 56 Cal. 431.

Rules and regulations: Must be fair and reasonable. Thus, one requiring a written application from persons desiring to become patrons of a gas company, has been held to be a reasonable rule; but it has also been decided that the secretary and general superintendent of such company, who acts for the company in relation to furnishing consumers with gas, may waive such regulation and bind the company: *Shepard* v. *The Milwaukee G. L. Co.*, 11 Wis. 234. But when the application is so connected with an agreement to abide by certain illegal rules and regulations, that a person cannot sign the former without being bound by the latter, there is no obligation to sign the application, and the company by presenting the application in that shape, waives the right to insist that an application should have been made in another shape. And furthermore, where

the company refuses to supply a person with gas because he declines to sign such application, it has been decided that it is not incumbent upon the applicant to repeat his demand each month, for a supply of gas, in order to entitle him to damages for a non-supply during the time it is wrongfully withheld from him.

If the officers of the company afterwards change their purpose, they should notify the would-be consumer to that effect: *Shepard* v. *The Milwaukee G. L. Co.*, 15 Wis. 318.

To require a deposit, is a reasonable regulation: *Wright* v. *Colchester Gas Co.*, 30 Gas. J. 336; *Samuel* v. *Cardiff Gas Co.*, 18 Gas. J. 192; *Shepard* v. *Milwaukee G. L. Co.*, 6 Wis. 539; *Williams* v. *Mutual Gas Co.*, 52 Mich. 499; *Ford* v. *Brooklyn G. L. Co.*, 10 N. Y. Supreme Ct. R. 621. A deposit of one hundred dollars has been deemed reasonable in amount, where sixty dollars worth of gas was used per week. The courts will imply a contract to supply gas where a deposit has been made, and enforce it, when called upon: *Williams* v. *Mutual Gas Co.*, 52 Mich. 499.

It has been held that a gas company may insist that all governors shall be connected at least one foot from each meter, and that directions as to the care and treatment of meters, may be made and enforced: *Foster et al.* v. *The Trustees of the Philadelphia Gas Works & The City of Philadelphia*, 12 Phila. 511; and furthermore, it has been held that a consumer will be bound by a reasonable agreement, signed by him, to allow the officers and employees of a gas company, from which he obtains his supply, to inspect and have the care of pipes upon his premises, whether he read the same or not: *Wright* v. *Colchester Gas Co.*, 30 Gas. J. 336. Such visits, however, must be made at stated times and with notice: *Shepard* v. *Milwaukee G. L. Co.*, 6 Wis. 539.

A rule which provides that water rents "shall be payable half-yearly in advance, on the first days of April and October, and if not paid twenty days thereafter, five per cent. additional will be charged, and that if not paid with the addition, within two months, the attachment will be cut off, until the rent, all expenses of cutting off and putting on, and the rent for an additional half-year be paid," has been held "unreasonable and oppressive:"

Dayton v. *Quigley*, 29 N. J. Eq. 77. Neither can a regulation be enforced which provides "that after water or gas has been admitted into the pipes and fittings of a consumer, the same must not be discontinued or opened, either for alteration or repairs, or extension, without a permit from the company; the party violating the regulation to be held liable to pay treble the amount of the damage occasioned thereby:" *Shepard* v. *Milwaukee Gas Light Co.*, 6 Wis. 539. It has also been held that the requirement of a gas or water company, that meters shall be placed upon the main pipes supplying apartment buildings, instead of the smaller pipes of the individual occupants thereof, is unjust and unreasonable: *Young* v. *Boston*, 104 Mass. 95. Such a company is not bound to furnish separate meters, however, unless there are separate and independent service pipes to connect with each meter: *Ferguson* v. *The Metropolitan Gas Light Co.*, 37 How. Pr. 189.

Meters: The question arose in an English case as to the conclusiveness of the meter as to the gas consumed. The evidence went to show that meters registered correctly when at correct level; that they registered in favor of the company at high water level and in favor of the consumer at low water level and that bills were less when dry meters were in use. And it was held that consumers must take proper care of their meters: *Preston* v. *Hayton & Raby Gas Co.*, 25 Gas. J. 889.

It was decided in a New York case where the obligation to take the meter as the measure of the gas consumed, rested upon a contract which the plaintiff required the householder to enter into before it would supply any gas, that such householder would not be bound by the registration of the meter if it had not been tested and certified to by an inspector. That it could not be looked upon as a reliable standard of measurement if this had not been done: *The Manhattan Gas Co.* v. *Flamme*, 12 N. Y. Weekly Dig. 245.

It has been held that where a gas inspector could easily have discovered that a meter had been tampered with, but failed to do so, for a considerable time, the company could recover nothing for the gas which passed through it, unregistered, previous to the date upon which the discovery was made: *Imperial Gas Co.* v. *Parker*, 5 Gas. J. 372. And where an action was brought

to recover the price of gas, the defendant claiming that he had ceased to use it, although he acknowledged that he had not given notice of the same to the company, his meter showing a consumption of several thousand feet, it was held that, although the Parliamentary Act made the registration of the meter, *prima facie* evidence of the quantity consumed, a preponderance of evidence to the contrary would be conclusive: *Alliance and Dublin Consumers Gas Co.* v. *Taaffe*, 27 Gas. J. 206.

Where a suit was brought to recover for gas not registered, the meter having been so tilted that the water ran out, the jury found for the plaintiff company for the estimated amount that had passed through the meter: *Victoria Docks Gas Co.* v. *Burton*, 16 Gas. J. 103. It is the duty of a gas company to keep its meters supplied with water: *Hacker* v. *London Gas Light Co.*, 32 Gas. J. 781. And where a water meter is placed in a building with the consent of its owner under an ordinance granting such privilege, and specifying that under such circumstances "the water board may charge a rate for water used, based upon the registration of the meter, in place of the specific rate which applies where no meters are in use," an assessment for water used during any given quarter, is collectible, even if it amounts to a much larger sum than would have been the case, had the meter never been put in use: *Parker and Another* v. *Boston*, 1 Allen, 361. It has furthermore been held that the board of public works of a city cannot charge certain consumers with expensive meters, put in to regulate the supply for which rent will be charged, without the consent of such consumers, nor impose the penalty of cutting off the water, in case the said consumers refuse to accede to the demands of such board, in said respect: *State ex rel. Red Star Line Steamship Co.* v. *Mayor and Aldermen of Jersey City*, 45 N. J. L. 246; s. c. 2 Am. & Eng. Corp. Cas. 233.

Where nothing is to be found in the charter of a gas company, conferring the right to charge meter rents, a subsequent Act, which provides that "no gas company shall have the right to charge rent for meters, when five hundred cubic feet per month have been consumed," is binding upon such company: *The State* v. *Columbus Gas Light and Coke Co.*, 34 Ohio State, 572.

The question has come up in England, as to who should

measure water and gas consumed, the company or the consumer, and it was decided, that "it is not correct to treat the company as supplying the consumer, but it is the consumer who is entitled to draw off from the main, what water or gas he requires," and that it was the place of the consumer to supply the necessary registering apparatus. And furthermore, that such measurement could only be effected by a meter or some equally accurate instrument: *Sheffield Water Works Co.* v. *Bingham*, L. R. 25; Ch. D. 443.

But is was held in another English case, that in default of a legislative act, consumers should not be compelled to put in meters: *Sheffield Water Works Co.* v. *Carter*, L. R. 8 Q. B. D. 632, and this would seem to be the most reasonable view to take.

In several Louisiana cases, it was conceded, that the quantity of water used by large manufacturing concerns could be ascertained with reasonable accuracy by keeping a record of the coal consumed, the basis being, one gallon of water to each pound of coal. It was observed by the presiding judge in one case, that no more reliable data could be obtained, although the method seemed more favorable to the supply company than to the consumer: *Levy* v. *Water Works Co.*, 38 La. An. 28; *Ernst et al.* v. *N. O. Water Works Co.*, S. Ct. La., May 9, 1887.

Cutting off supply: The usual course of the companies in case of disputed bills, is to promptly cut off the supply; but it is well settled that an injunction will lie, enjoining such action, pending a judicial investigation.

It was held in one case of considerable interest, that the cutting off gas would be in the nature of irreparable mischief, for, as it was observed by the presiding judge, "the use of gas in cities has become almost as great a necessity as the use of water," and an illegal deprivation of one or the other, and particularly where such use is for ordinary domestic and family purposes, would cause such damage as to call for the interposition of a court of equity: *Sickles* v. *Manhattan G. L. Co.*, N. Y. Sup. Ct. 1882; 14 Cent. Law J. 301; and upon a subsequent motion to continue the temporary injunction granted in the above case, the same doctrine was again laid down with much emphasis: *Sickles* v. *Manhattan G. L. Co.*, 64 How. Pr. 33.

In a very similar English case, it was held that although the withholding or cutting off a supply of gas or water, would render a company liable to a statutory penalty, it was no good reason why a company should not be enjoined from cutting off the supply of a customer, pending the settlement of a dispute as to what sum was due from him to such company. The position was taken, that such an act would be an injury of the gravest nature, and one that might be looked upon in the light of producing irreparable damage: *Hayward* v. *East London Water Works Co.*, L. R. 28 Ch. D. 138; *Pudsey* v. *Rossendale Union Gas Co.*, 14 Gas. J. 927.

A company engaged in furnishing water under a franchise, cannot shut off the supply, without reasonable cause: *McCrary* v. *Beaudry*, 67 Cal. 120.

The right to shut off gas does not extend to arrears created by former occupants: *Sheffield Water Works Co.* v. *Wilkinson*, L. R. 4 C. P. D. 410; *Morey* v. *Metropolitan Gas Light Co.*, 6 J. & Sp. 185; *N. O. G. L. & Banking Co.* v. *Paulding*, 12 Rob. (La.) 379. And a promise, by the new tenant, to liquidate such arrears, made in consequence of a threat, that unless he did so, the supply would be shut off, is void; such promise to be binding, must be freely and unequivocally made: *The N. O. G. L. & Banking Co.* v. *Paulding*, 12 Rob. (La.) 378.

Although a company may supply gas or water to a person in its debt, it is not estopped, at any time, from cutting off the supply, because of such former indebtedness: *The People* v. *Manhattan Gas Light Co.*, 45 Barb. 136.

Where it is agreed between a private individual and a gas company, that the latter shall supply the former with gas, collecting therefor quarterly, such company cannot cut off the supply in the midst of a quarter, nothing being due, because it has a dispute with such party, as to the amount due for gas consumed on other premises: *Smith* v. *London Gas Co.*, 7 Grant. 112; *Gas Light Co.* v. *Colliday*, 25 Md. 1.

Payment of a water license, under threat of turning off the supply, is payment under compulsion and if the charge is excessive, the excess may be recovered: *Westlake et al.* v. *City of St. Louis*, 77 Mo. 47; s. c. 3 Am. & Eng. Corp. Cas. 581. And where a water company threatens to cut off the supply because

a consumer refuses to pay more than the legal rate therefor, a court will enjoin such company from doing so: *Cromwell* v. *Stephens*, 2 Daly, 15.

Where a person who desires to have gas turned on, his premises being duly prepared therefor, signs a contract, stating among other things, that "we, whose names are hereunto subscribed, agree to take gas from The Washington Gas Light Company upon the condition that the company reserves to itself the right to refuse to furnish or at any time to discontinue gas to any premises, the owner or occupant of which shall be indebted to the company for gas or fittings used upon such premises or elsewhere," such contract relates to future delinquencies; and it has been held, that a company is liable in damages to a person, to whom gas is furnished, after signing the above agreement, for cutting off the supply because of nonpayment of an old bill for gas supplied previously, in another locality: *Lloyd* v. *Gas Light Co.*, 1 Mackay, 331. An injunction will lie to prevent a water company from cutting off the supply of a patron, who offers to pay in advance the proper legal rate, notwithstanding that the company demands more: *Ernst et al.* v. *N. O. W. W. Co.*, S. Ct. La., May 9, 1887; *Levy* v. *Water Works Co.*, 38 La. An. 25-9.

Where water is shut off, without any valid excuse, a person may enforce his right to be supplied by mandamus: *McCrary* v. *Beaudry*, 67 Cal. 120.

Where a water company is enjoined from cutting off the water supply of a patron without restriction as to time, the injunction remains in force until modified or discharged by order of the court: *State ex rel. Water Works Co. et al.* v. *Levy et al.*, 36 La. An. 941.

Where a water company has been rightfully enjoined from cutting off a customer's water supply, and the injunction is discharged, such consumer can recover all the damages he has suffered: *Levy* v. *N. O. W. W. Co.*, *supra*.

In estimating damage of this sort, the jury may take into consideration the deterioration in the value of the property for the purpose of sale or rental, and the cost of removing the gas fixtures and restoring the premises: *Gas Light Co.* v. *Colladay*, 25 Md. 1.

Evidence may be introduced to show the nature and extent of the plaintiff's business; that his trade is seriously affected by being deprived of gas and that his competitors are supplied with it. He will be entitled to such damages as will compensate him for his pecuniary loss, as well as for the inconvenience and annoyance experienced by reason of the action of the company: *Shepard* v. *Milwaukee G. L. Co.*, 15 Wis. 318.

Rates: Companies are entitled to make reasonable charges for gas and water. The fact that a company charges a less rate in that portion of a city in which it is obliged to compete with other companies, than it does in sections where it has a monopoly of the supply, cannot be taken advantage of by consumers paying the highest rate, so long as it is reasonable. A reasonable price paid by one, is not made unreasonable because another pays less: *Schwarz and six thousand others* v. *Consolidated Gas Co. of Baltimore*, C. Ct. Balt. City, March 4, 1887; 1 R. & Corp. Law J. 339; *Rogan* v. *Aiken*, 9 Lea, 610; *Jones* v. *R. R. Co.*, 91 Eng. C. L. 718.

An agreement between a gas company and a municipality, reciting that such company shall sell gas as good and as cheap as is furnished in Boston, New York and Baltimore, means that such company must at *all* times furnish gas as cheap as it is furnished at the same time in the cities designated: *Worcester Gas Light Co.* v. *Worcester*, 110 Mass. 353; *Decatur Gas Light and Coke Co.* v. *City of Decatur*, 120 Ill. 67.

Where a water company continues to supply a consumer after his refusal to pay an advanced annual rate, the advanced rate cannot be recovered from him: *Aqueduct Co.* v. *Page*, 52 N. H. 473.

It is well settled, that a municipality may, when duly empowered by the legislature, assess specially, the lands along which a water service is laid, in order to maintain the same, and exempt those belonging to persons who pay water rates: *Richmond & Allegheny R. R. Co.* v. *Lynchburg*, 81 Va. 473; *Jones et al.* v. *Water Commissioners*, 34 Mich. 273.

It has been held in Pennsylvania, that while it would be unconstitutional to empower a water company to make assessments in the nature of water rents upon every dwelling in every street in a city in which water pipes are or may be laid, such would not be the case after the works were transferred to the munici-

pality, for the reason that municipalities have the right of assessing the cost of local improvements upon properties benefited. Therefore, the owner of premises upon such street would be obliged to pay the rate assessed against him, even if his water supply came from an entirely different source: *Allentown* v. *Henry*, 73 Penna. 404. But, "water rents assessed on vacant lots, at rates adopted by the board of works at its discretion and without regard to special benefits or valuations, are illegal:" 24 Am. Law Reg. 583; *Jersey City* v. *Vreeland*, 14 Vroom, 638; *State* v. *Mayor*, 45 N. J. L. 256.

It has been decided in England, that where a landlord covenants in his lease, to pay "all water rates and taxes chargeable in respect of the demised premises," he is bound to pay for the water consumed by his tenant: *Spanish Telegraph Co.* v. *Shepard*, L. R. 13 Q. B. D. 202.

It is well settled that a surety is not liable for gas furnished to the successor of the person whose bills he has agreed to become responsible for. The fact that the company had no notice of the change of proprietors, will not alter the case: *Manhattan G. L. Co.* v. *Ely*, 39 Barb. 174.

A city supplying its citizens with water, is simply exercising the function of a private corporation, and the neglect of city officials to collect water rates when due, is no reason why they may not be subsequently demanded: the right to do so is not lost through the city's refraining to cut off the supply for nonpayment of rates when it might have done so, and furthermore it is well settled that mortgagees are bound for all arrearages due water and gas companies, when they purchase premises upon foreclosure proceedings: *Girard Life Ins. Co.* v. *Philadelphia*, 88 Pa. St. 393.

The owner of a large apartment house, who is unable to obtain water above the basement of his building, one-half of every twenty-four hours, by reason of the large quantity consumed in neighboring manufactories, and who has been obliged to erect upon his roof, tanks to collect rain water, to which he is forced to resort for a fair share of his supply, is not obliged to pay a water company according to its rule governing hotels, and an injunction will be granted to restrain such company from cutting off the supply because of his refusal to do so: *Cromwell* v. *Stephens*, 3 Ab. Pr. (N. S.) 26.