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into a cross-walk, and under these circumstances, the Court held that it could not have been unavoidable since the act of backing a car into a cross-walk is such a hazardous undertaking that there was a duty on the driver to make certain no pedestrian was there.

We cannot conclude this subject of torts without calling attention to our Supreme Court's final complete capitulation to the mechanical world in which we live. In *Winterberg v. Thomas*,[14] the ultimate question to be determined was whether the Plaintiff had gone through a green light or a red light. Although the Plaintiff testified that he went through a green light, although his testimony was substantiated by another witness, and although there was testimony that the Defendant at one time had admitted that the Plaintiff had the green light, and finally despite the fact that the jury in its verdict believed this testimony and found for the Plaintiff, our Court nevertheless reversed the verdict, stating that the court should have taken the case away from the jury because a city engineer of Denver had testified as a mathematical fact that the light must have been red.

TAXATION, PUBLIC UTILITIES AND LOCAL GOV'T

STANLEY L. DREXLER

Our Court last year decided 22 cases dealing with these subjects. In view of this fecundity, the probable prolixity of my colleagues, the scope of this program and the limitations of time, I claim immunity from being held in contempt for treating 16 of these decisions as unworthy of mention.

TAXATION

Of the six remaining cases, the one most likely to achieve immortality—at least among my brethern of the tax bar—is *Cass v. Dameron*.[1] I am told by representatives of the Department of Justice, which represents the taxpayer pursuant to the Soldiers' and Sailors' Civil Relief Act, that by the time these remarks are spoken a petition for *certiorari* will have been filed by the Attorney General of the United States in the United States Supreme Court.

Claiborne Dameron, domiciled in Louisiana, in 1948 was a major in the United States Air Force, stationed at Lowry Field Air base. He and his family lived in an apartment in Denver. There he had household goods of an assessed value of $460. On this he paid under protest to Roy W. Cass Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, a tax of $23.31. He filed suit to recover this tax and had judgment in the District Court. Mr. Cass appealed. The Supreme Court reversed.

As I read the applicable provision of the Soldiers' and Sailors' Civil Relief Act, Major Dameron's personal property, tangible or intangible, not used in a commercial enterprise, is denied a situs for State or local taxation outside of Louisiana. As the Court reads

[14] 246 P. 2d 1058, 1951-2 C. B. A. Adv. Sh. (July 7, 1952).

[1] 244 P. 2d 1082, 1951-2 C. B. A. Adv. Sh. (May 12, 1952).

it, however, in the light of its legislative history, this result obtains only if Louisiana asserts a tax on the property. Although a State may tax the tangible personal property of its domiciliaries not physically present within its borders, most States tax tangible property on the basis of its physical location on a certain date or ratably on the basis of its location throughout the year, without regard to the domicile of the owner. There was no showing that Louisiana asserted a tax on Major Dameron's household goods in 1948, and our Court concluded that if it denied them a Colorado situs, they would escape taxation altogether. It reasoned that the purpose of the provision was to prevent multiple taxation, not to secure tax exemption, and therefore read into the provision, as I see it, a requirement that a showing be made that double taxation will result before the jurisdiction where a soldier's household goods are located during his military service will be denied the power to tax them on the basis of their physical presence.

One other decision of the Colorado Supreme Court deals with taxation. It is *Prudential Insurance Company v. Kavanaugh.*[2] A Colorado statute imposes a two per cent tax on the gross amount of all premiums collected or contracted for during the year on policies of insurance on Colorado risks or properties. An option common in life insurance policies permits the insured to use the dividends allocated out of divisible surplus during the year to purchase additional paid-up insurance under the same contract. The question in this case is whether the dividends so used constitute additional premiums subject to the tax. The Court held that they do not. In a previous decision, the Court held that dividends applied to reduce the cost of the current premiums did not affect the amount of such premiums subject to the tax. The decision in the instant case rests partly upon consistency with the earlier decision, partly on the authority of an Iowa case construing a similar statute, but chiefly upon the desirability of avoiding the great administrative difficulty of determining each year how each insured elected to treat the dividends allocable to him. Similar statutes are common. Only in Iowa and Colorado have they been judicially construed on this point. In most states, including Colorado, the Insurance Departments and Attorneys General, have held additional insurance purchased under the same contract with dividends therefrom, to be subject to the tax. It will be interesting to see whether the Colorado decision will bring about litigation or voluntary administrative reversal in the other states.

PUBLIC UTILITIES

Turning from taxation to public utilities, we come, of course, to *Public Utilities Commission v. Telephone Company,*[3] clearly the case of the year in this field. As you know, the Court in this case held that the regulation of telephone rates in Denver is not a local or municipal matter within the jurisdiction of Denver under the

[2] 240 P. 2d 508, 1951-2 C. B. A. Adv. Sh. (Jan. 21, 1952).
[3] 243 P. 2d 397, 1951-2 C. B. A. Adv. Sh. (Feb. 11, 1952).

Home Rule Amendment but is committed to the State Public Utilities Commission. In so holding the Court ran squarely into *Denver v. Mountain States Telephone and Telegraph Company*,[4] holding such regulation to be a local or municipal matter. The Court was offered an opportunity to take an easy way out by distinguishing the 1919 decision on the ground that technological progress since 1919 and the growth of the metropolitan area outside the Denver city limits have created a new interdependence of inter and intracity telephone facilities, communication and service, but denied itself the blindfold and faced right up to the firing squad, holding its former decision to be wrong, wrong in 1919 and wrong in 1952, and expressly reversed itself. The Court pointed out that it would be intolerable to have telephone rates regulated simultaneously by the State and by fourteen home rule cities. The Court also questioned its recent decision in *Berman v. Denver*,[5] holding that the initiation of an ordinance by the people of the City and County of Denver is the exclusive method available for the exercise of the City's regulatory power in the utilities field. The Court said, however, that in view of its decision in the instant case, it was unnecessary for it to reconsider its decision in the *Berman* case

LOCAL GOVERNMENT

The remaining three cases deal with local government. They are (1) *Kingsley v. Denver*,[6] striking down a contract for the purchase of voting machines involving, as the Court held, the issuance of bonds without a vote of the people and the contracting for payments to be made of funds not appropriated for the purpose; (2) *Greenwood Village v. Heckendorf*,[7] holding that a property owner who contracts to sell real estate subject to getting it disconnected from a town retains his status as owner for the purpose of maintaining disconnection proceedings, but that disconnection will not be permitted if its result would be to divide the town into two areas wholly separated from each other; and (3) *Enos v. District Court*,[8] holding that a *bona fide* attempt to comply with the laws creating a municipal corporation, followed by an exercise of the corporate franchise creates at least a *de facto* corporation, the validity of which may be challenged only by the state, that the district attorney may not permit a private realtor to act on behalf of the state by giving him permission to bring an *ex rel* action on behalf of the people, and pointing out that the effect of a 1921 amendment to the 1908 statutes relating to the incorporation of municipalities is to give the county court authority to decree that the incorporation is complete instead of to perform merely ministerial functions. The moral is that anyone who is unhappy about a proposed municipal incorporation had better show up in the county court and not wait around until the mayor and trustees have been elected to bring a *quo warranto* action to kick them out of office.

[4] 67 Colo. 225, 108 P. 604 (1919).
[5] 120 Colo. 218, 209 P. 2d 754 (1949).
[6] 247 P. 2d 805, 1951-2 C. B. A. Adv. Sh. 462 (Aug. 12, 1952).
[7] 247 P. 2d 678, 1951-2 C. B. A. Adv. Sh. (Aug. 4, 1952).
[8] 238 P. 2d 861, 1951-2 C. B. A. Adv. Sh. (Nov. 13, 1951).