96 Kan. 820
Supreme Court of Kansas.

DRESSER ET AL.
v.
CITY OF WICHITA ET AL. *

No. 20410.
|
Dec. 11, 1915.
|
Rehearing Denied Jan. 17, 1916.

***1194** *Syllabus by the Court.*

The provision of the ordinance in question, requiring those operating any self–propelled vehicles carrying passengers for hire to pay additional licenses of $300 to $400 before being permitted to solicit or receive passengers on the paved portions of certain designated streets, although practically prohibitive as to such designated places, is a valid exercise of municipal control.

That the effect of such ordinance, if enforced, would involve a benefit to the street railway company is no reason why the city may not prescribe such regulation.

Before the courts can interfere with the exercise of legislative power granted to the city to license and regulate such conveyances, it must appear that the attempted exercise of such power is flagrantly unjust, unreasonable, or oppressive.

Additional Syllabus by Editorial Staff.

Operators of jitneys and similar vehicles which are run for hire on the public streets are "common carriers."

Synopsis
Appeal from District Court, Sedgwick County.

Action by Paul A. Dresser and others against the City of Wichita and others. From a judgment for defendants, plaintiffs appeal. Affirmed.

Johnston, C. J., and Porter, J., dissenting.

West Headnotes (4)

[1] **Automobiles**
Constitutionality and Validity of Acts and Ordinances

48A Automobiles
48AIII Public Service Vehicles
48AIII(B) License and Registration
48Ak73 Constitutionality and Validity of Acts and Ordinances

That the enforcement of an ordinance, requiring licenses from persons operating motor vehicles for hire on paved portions of certain streets, will benefit the street railway company held not to make it invalid.

9 Cases that cite this headnote

[2] **Automobiles**
Constitutionality and Validity of Acts and Ordinances

48A Automobiles
48AIII Public Service Vehicles
48AIII(B) License and Registration
48Ak73 Constitutionality and Validity of Acts and Ordinances

An ordinance enacted to license and regulate the use of motor vehicles for hire will not be declared invalid, unless flagrantly unjust, unreasonable, or oppressive.

9 Cases that cite this headnote

[3] **Automobiles**
Constitutionality and Validity of Acts and Ordinances

48A Automobiles
48AIII Public Service Vehicles
48AIII(B) License and Registration
48Ak73 Constitutionality and Validity of Acts and Ordinances

An ordinance, requiring additional license fees from persons operating motor

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

vehicles for hire or soliciting passengers on paved portions of certain streets, held a valid exercise of the power given by statutes enacted under Const. art. 12, § 5, Gen.St.1909, §§ 998, 1214, subdiv. 4, and sections 1254, 1255, 1289, though practically prohibitive as to such places.

22 Cases that cite this headnote

[4] **Automobiles**
Who Are Carriers
48A Automobiles
48AIII Public Service Vehicles
48AIII(B) License and Registration
48Ak76 Who Are Carriers

Operators of jitneys and similar vehicles which are run for hire on the public streets are common carriers.

3 Cases that cite this headnote

Attorneys and Law Firms

Stanley, Stanley & Hegler, of Wichita, for appellants.

James A. Conly and Kos Harris, both of Wichita, and Ferry, Doran & Dean, of Topeka, for appellees.

Opinion

WEST, J.

This suit was brought to enjoin the enforcement of an ordinance enacted by the city of Wichita, prescribing certain regulations and requiring certain licenses from persons operating jitneys and other motor vehicles. The ordinance is attacked as void because prohibitive and unreasonable.

Without going into unnecessary detail it is sufficient to say that numerous regulations are laid down for the control of the vehicles in question, and a license of $25 to $35 is required, according to their capacity. Section 4, however, requires that before the owners of such vehicles shall be permitted to solicit or receive passengers on or along the paved portions of certain designated streets, they shall pay an additional license of $300 to $400, according to the capacity of the vehicle. It is asserted, and we are convinced, that as to these specifically designated places the requirement is, and doubtless was, intended to be practically prohibitive. We find no other feature of the ordinance about which serious question could arise as to reasonableness, and it is convincingly apparent that, regardless of this requirement of section 4, the ordinance would have been enacted and would be valid. So the validity of this one provision is the sole question for determination.

[1] [2] [3] [4] It is not only suggested, and to some extent proved, as shown by the record, but it is well known, that the street car system in the city of Wichita is one long established; that the company is required to pay taxes, to keep up and maintain its tracks, and to submit to such reasonable regulations as may be prescribed for its operation. Its maintenance and continuance involve, not only the investment and profit or loss upon a large sum of money, but to a great extent the convenience and necessity of the city and its inhabitants. Jitneys and similar vehicles run, not upon tracks laid at their owners' expense, but upon the public streets, with no burden of providing depots or waiting stations, or outlay, except the mere cost of vehicles and their operation. No doubt persons thus operating these conveyances for hire must be classed and are common carriers. Being such, they are, of legal necessity, subject to regulation and control as are other common carriers of passengers for hire.

The presumption of good intention must be accorded the city in passing the ordinance. The same rules of construction apply as to a statute, and, unless clearly void, the enactment must be upheld. Swift v. City of Topeka, 43 Kan. 671, 23 Pac. 1075, 8 L. R. A. 772; Denning v. Yount, 9 Kan. App. 708, 59 Pac. 1092.

That the effect of section 4 is incidentally or necessarily to benefit the street railway company is not the last word to be said. It is of interest quite vital to the municipality that a street car system, not only exist there, but that it be able to subsist and furnish proper and needed service. It is not a misuse of power so to legislate that this result can be accomplished merely because it involves an advantage to the utility in question as well as to the municipality.

There is no attempt to exclude from all the streets. On the contrary, all streets and parts thereof except those

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

thus specially reserved are expressly permitted to be traversed at will.

***1195** The Constitution vests in the Legislature authority to make provision by general law for the organization of cities, towns, and villages. Article 12, § 5. This has been held to add nothing to the general grant of legislative power expressed in section 1 of article 2. Wulf v. Kansas City, 77 Kan. 358, 94 Pac. 207. The Legislature may rightfully prescribe the powers of a city, "subject only to constitutional restrictions." Roby v. Drainage District, 77 Kan. 754, 759, 95 Pac. 399. It can act directly or through some other body. State v. Railway Co., 81 Kan. 430, 105 Pac. 704; State ex rel. v. City of Hutchinson, 93 Kan. 405, 410, 144 Pac. 241. In pursuance of this power the Legislature has conferred on cities authority to do a variety of things.
"To * * * do all other acts in relation to the * * * concerns of the city necessary to the exercise of its corporate or administrative powers." Gen. Stat. 1909, § 1214, subdiv. 4.

To adopt all necessary measures for the protection of the traveling public. Section 1254. To fix the rate of carriage of persons. Section 1255. To vacate and close any street or alley or portion thereof. Section 1286. To require the construction of viaducts or tunnels over and under streets or tracks. Section 1289. To levy and collect a license tax upon and regulate all occupations conducted in the city, "including * * * hackney or livery carriages * * * and all wagons and other vehicles transporting * * * passengers for pay." Section 998. To issue bonds for the purpose of purchasing, constructing, or extending utilities, including a street railway. Laws 1913, c. 1375. To construct viaducts and assess the cost to a street railway company. Laws 1913, c. 106. To acquire title by purchase, gift, or condemnation of lands for public feed lots, and to have supervision and control thereover. Laws 1915, c. 127.

In Kansas City v. Overton, 68 Kan. 560, 75 Pac. 549, an ordinance was upheld requiring hucksters or hawkers to pay a license of $35 a month and a helper or assistant to pay a license of $15, and exempting from its operation those who personally sold the produce of their own or leased lands. In Schaake v. Dolley, 85 Kan. 598, 118 Pac. 80, 37 L. R. A. (N. S.) 877, Ann. Cas. 1913A, 254, upholding the validity of the statute authorizing the charter board to refuse a bank charter where it deems that no public necessity therefor exists, it was pointed out that the alleged common–law right to engage in the banking business must be governed by the wants and conditions of the people, and that it is one of the functions of the Legislature to provide such new rules subversive of the common law as it may deem proper for the welfare of society in the changing conditions incident to progress. It was said that to decide the act in question void would be merely to substitute the court's opinion for that of the deliberate judgment of the Legislature; further, that the act does not prohibit persons from engaging in the banking business, but from needlessly duplicating an established business, regardless of the public necessity. The same doctrine applies here. Modern requirements for municipal transportation render it essential that the power to regulate by the governing body be broad. In Telephone Co. v. Telephone Association, 94 Kan. 159, 165, 146 Pac. 324, involving the establishment of a competitive telephone service in a field already occupied, it was suggested in the opinion that a mere rival can have no such interest as will permit it to maintain an action to prevent competition; that such matters are to be controlled by those acting for the public, in that case the Utilities Commission, the statute having provided as a matter of public policy that a telephone company, unless a mutual one, will not be authorized to do business until it has obtained a certificate or a license of authority "as a public convenience and necessity within the community where it seeks to do business." Page 166 of 94 Kan., page 327 of 146 Pac. More closely analogous, perhaps, is O'Neal v. Harrison, 96 Kan. 339, 150 Pac. 551, to the effect that under a statute giving power to make regulations to secure the general health, to prevent and remove nuisances, and to compel and regulate the removal of garbage beyond the corporate limits, a city may grant an exclusive right to the highest bidder to remove all the garbage. It was vigorously contended that citizens have a natural or inherent right to remove the garbage from their own premises if they so desire, and that discrimination and favoritism were not in contemplation when the power referred to was vested in the municipality. But the court declared that: "The decided weight of authority supports the right of a municipality either itself to take over the conduct of a business the manner of operating which may affect the public welfare, or to put it entirely in the hands of

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

a single individual or company." Page 340 of 96 Kan., page 551 of 150 Pac.

It was also said that while monopolies are against public policy, this is a rule of the common law not binding upon the Legislature.

Underlying all this authority is the substratum of reasonableness, for arbitrary, unreasonable, or capricious enactments are not a use, but an abuse, of legislative power. Nevertheless, those who pass ordinances for a city, like those who enact statutes for a state, are primarily the judges of what reasonable requirements are, and it is not for the courts to interfere unless and until it appears beyond question that the thing done was not a use, but a misuse, of power.
"Before, however, courts will interfere and declare a license tax to be unjust or unreasonable, a flagrant case of excessive and oppressive abuse of power by the city authorities in the levying of the license tax must be established." ***1196** City of Lyons v. Cooper, 39 Kan. 324, Syl. 1, 18 Pac. 296.

See, also, Lebanon v. Zanditon, 75 Kan. 273, 275, 89 Pac. 10; Stark v. Geiser, 90 Kan. 504, 506, 135 Pac. 666.

Whatever natural right a citizen may have to traverse the streets of his city with a motor vehicle for the conveyance of his family or his friends, no inherent right exists to devote his vehicle to the public use of carrying passengers for hire and appropriate to himself the use of all the streets for purposes of profit.

Beyond question, the city could vacate one or more of the streets over which he might desire to operate. It cannot only require him to pay a license tax, but it may regulate the manner of his carrying on his enterprise. Why may it not classify motor vehicles by themselves and refuse to permit them to crowd congested portions of the business streets where patrons of another class of vehicles—street cars—must alight and take passage? Suppose, indeed, a company or corporation owning motor vehicles had the facilities and the desire to occupy all the streets to the utter destruction of the street car business. Would the city have nothing to say? Is the municipality a mere automaton, helpless in the presence of crowding and conflicting enterprises and scrambles for business which involve the comfort, the convenience, and the safety of the traveling public? Not so.

The power to regulate livery and sales stables has been held to include the right to designate their location and to prohibit their erection at other places. City of St. Louis v. Russell, 116 Mo. 248, 22 S. W. 470, 20 L. R. A. 721. In licensing the use of vehicles on streets it has been held that the city is exercising its police, and not its taxing, power. Tomlinson v. City of Indianapolis, 144 Ind. 142, 43 N. E. 9, 36 L. R. A. 413. See note as to authority of municipalities. It was held by the Texas Court of Criminal Appeals in Ex parte Savage, 63 Tex. Cr. R. 285, 141 S. W. 244, Ann. Cas. 1913D, 951, that an ordinance, providing for an official bill poster who shall have the sole power to post bills and advertisements, does not violate the Texas statute against monopolies. While denying the validity of the particular ordinance in question, for other reasons it was declared that the city might regulate the erection and maintenance of billboards and prevent the maintenance of others, except as authorized substantially by the ordinance, and require persons, before pursuing such business, to procure proper license therefor. In McFall v. City of St. Louis, 232 Mo. 716, 135 S. W. 51, 33 L. R. A. (N. S.) 471, an ordinance was upheld which licensed hack drivers who could procure the consent of abutting property owners, and denied the same privilege to those who could not obtain such consent. As to the power of the city to establish exclusive hack stands, see note 33 L. R. A. (N. S.) 471. Many exclusive franchises are held not to be unlawful, although creating legal monopolies. 27 Cyc. 896. In the case of In re William Hoffert, 34 S. D. 271, 148 N. W. 20, 52 L. R. A. (N. S.) 949, the statute under consideration imposed a registration fee of $6 on all motor vehicles used upon the public highways of the state, 12 1/2 per cent. thereof to be forwarded to the secretary of state, the remainder to be placed in the county motor vehicle road fund and expended only for the repair and maintenance of public highways beyond the limits of cities and towns. The power of the Legislature to impose this license in addition to an ad valorum tax was upheld. The road tax of 87 1/2 per cent. was held to be a proper charge for the privilege of using such vehicles upon the public highway; also that the placing of self–driven vehicles in a class by themselves is not an unlawful discrimination. The footnote (page 949 of 52 L. R. A. [N. S.]) has numerous recent decisions touching the control and classification

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

of motor vehicles upon public highways. The city of San Antonio passed an ordinance regulating the operation of street cars, jitneys, motor omnibuses, and other vehicles using its streets for local street transportation. The court exhaustively discussed the power of cities to control such transportation. It seems that the particular provision complained of was one requiring a bond for the protection of citizens, and on rehearing it was said:

"Appellant desired to use the streets for private purposes of gain, and the city has the absolute right to prohibit the use of the streets for his private business, and in case it gave permission for such use had the right to compel the payment of a license fee." Greene v. City of San Antonio (Tex. Civ. App.) 178 S. W. 6, 11.

Certified copies of opinions of the Supreme Court of Tennessee in Memphis Street Railway Company v. Rapid Transit Company et al. and City of Memphis et al. v. State ex rel. Ryles have been furnished. These decisions, recently rendered, validate the statute of Tennessee, declaring those operating jitneys to be common carriers, and that their operation should be unlawful within incorporated cities or towns without first obtaining a permanent license under ordinances from such city or town, and that no such license should be issued unless the owner should file with the clerk of the county court a bond of not less than $5,000 to cover loss of life or injury to person or property inflicted by such carrier or caused by his negligence, and that such license should embody such rights, terms, and conditions as the city or town might elect to impose. Complaint was made because the city of Memphis had passed no ordinance pursuant to this statute, but the court said it was very clear then that the defendant had no right whatever to do business on the streets of Memphis. In the first of the cases mentioned, it was held that the street railway company could enjoin the jitney owners from operating upon the streets without license. ***1197** In the other the city prosecuted for violation of the statute and the defendant sought release by writ of habeas corpus. The same conclusion was reached as to the validity of the enactment, and the opinion contains a thorough discussion of the recent development of jitney transportation and the propriety of separate classification. In Ex parte Dickey (W. Va.) 8 S. E. 781, the city of Huntington through its commissioners passed an ordinance for the regulation and licensing of "jitney busses," the licenses being graded somewhat on the capacity of the vehicles, requiring a bond of $5,000 to pay all lawful claims for damages, the commission reserving to itself the right to refuse or grant such license as applied for, or to change the route or hours set forth in the application, and then granting the license upon such changed route or hours or both. It was held that one who makes the highway his place of business and uses the streets for his private gain in running a stage–coach or omnibus may be utterly denied such right, or that it may be permitted to some and denied to others. In the opinion it was said:

"Conveyances on the streets, for the use of the general public, are of the same character, and, in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks when unnecessarily numerous, interfere with ordinary traffic and travel and obstruct them. Prescription of routes or places of business for them is a fair, reasonable, and efficacious means of preventing such results. * * * They are engaged in a public service which the Legislature may always regulate." Page 785 of 85 S. E.

The foregoing serve to demonstrate the principle which must control.

In view of all the facts and circumstances, it would be difficult to find an expression more apt than the following from the decision in the case of In re Martin, 62 Kan. 638, 640, 64 Pac. 43, 44:

> "There is unquestioned power in the Legislature to impose a license tax on occupations, whether it be laid for regulation or for purposes of revenue. * * * Being a license tax, the express constitutional restrictions as to equality and uniformity of rate do not apply, and the amount of the tax, as well as the method of imposing it, is left to legislative judgment and discretion. * * * If the license tax imposed were flagrantly unreasonable, unjust, and oppressive, courts might

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

properly interfere; but we have no such case before us."

The trial court denied the injunction sought by the plaintiff. The requirement of section 4 is within the power of the municipality and the judgment is affirmed.

BURCH, MASON, MARSHALL, and DAWSON, JJ., concurring.

PORTER, J. (dissenting).

Believing that the judgment in this case is wrong, I am compelled to dissent; and, because the decision is far–reaching in its results and of more than ordinary importance to the public, I feel it my duty to state the grounds upon which I dissent.

Most that is said in the majority opinion respecting the power of the city to regulate the operation of jitneys and their use of the streets and to impose a reasonable occupation tax is, I think, beside the mark. This is obvious from the fact that no contention to the contrary is made by the plaintiffs. In their briefs plaintiffs concede that the city may even forbid the operation of jitneys upon certain streets in case the safety of the public requires it. Moreover, at the oral presentation, counsel for the street railway company, who argued the case for the city, frankly stated their contention to be that the city possessed the power to enact the ordinance for the express purpose of preventing competition in the business of the street railway, if such competition would, in the opinion of the city commissioners, result in the destruction of its business or deprive it of sufficient revenue to enable it to furnish adequate service to the public. Although the majority opinion starts out with the concession that section 4 of the ordinance was enacted for the purpose of prohibiting jitneys from operating on certain streets in the city, decisions are cited to the effect that the presumption is that the city acted with a good intent. Since the intent is known and conceded on all sides to have been to prevent jitneys from competing with the street railway, we do not need the aid of any presumption as to its character.

The sole question we have to determine is this: Has the city the power to enact an ordinance forbidding jitneys to operate upon any street occupied by the tracks of a street railway? It is even narrower than I have stated it. The real question is, Has the city the power to enact such an ordinance for the sole purpose of preventing competition in the business of the street railway? If it has, then it follows that the city may prohibit the owners of hacks, omnibuses, taxicabs, and carriages of any kind from using any street to transport persons from one part of the city to another for hire on the ground that the best interests of the city are subserved by giving to the street railway company an exclusive right to transport passengers.

The majority opinion cites authorities to the effect that many exclusive franchises are held not to be unlawful, though creating monopolies. None of the authorities cited goes so far as to intimate that a city, under the guise of attempting to regulate one business, could add anything to the rights and privileges of another business which a utility corporation carries on under an existing franchise. The city of Wichita is under the commission form of government, and the statute governing such cities prohibits the amendment of any existing grant, right, privilege, or franchise except by an ordinance which, under certain conditions, must be submitted to the electors of the city. Section 1330, Gen. Stat. 1909. Moreover, it must be obvious that even where a city grants an exclusive right to a street railway, it could not, ***1198** if it would, give to the company the exclusive right to the use of the entire streets, nor forbid the public to use the portion of the streets not occupied by the railway. Suppose a company carrying on the transfer business in a city should complain that its investment was being ruined by competition of private persons who used motor cars and offered the public quicker service at cheaper prices. Could the city under the guise of "regulation," but solely to protect the business of the corporation, enact an ordinance prohibiting the individuals from using the portions of the streets adjacent to railway stations to solicit business? Would the fact that the corporation was operating under a franchise giving it special privileges and requiring it to pay to the city a share of its receipts make any difference? These questions are easily answered when it is remembered for what purpose the streets and highways are established.

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

The question is asked in the majority opinion:

> "Why may it [the city] not classify motor vehicles by themselves and refuse to permit them to crowd congested portions of the streets where patrons of another class of vehicles—street cars—must alight and take passage?"

The difficulty is that that is not the question. Plaintiffs, who sought to enjoin the enforcement of the ordinance, frankly concede the power of the city to regulate the business and to classify motor driven vehicles by themselves. The question whether the city has the power to enact reasonable provisions designed to prevent the crowding of congested portions of the business streets is not involved directly or indirectly in the case.

There is no analogy applicable to this case which can be drawn from the principle decided in Schaake v. Dolley, 85 Kan. 598, 118 Pac. 80, 37 L. R. A. (N. S.) 877, Ann. Cas. 1913A, 254. There the court upheld the power of the state bank commissioner to refuse a charter for a new bank in a community where, in his judgment, the banks already in existence were amply able to care for all the business. The streets of a city are highways for the use of all the public. The city cannot, except for the purpose of reasonable regulation, prohibit the public from the use of the streets. While it may, by ordinance, prohibit heavy traffic on particular streets, its ordinance must be reasonable; and where an ordinance, otherwise reasonable in this respect, denies to an abutting lot owner reasonable access to his property, it has been held void. Brown v. Nichols, 93 Kan. 737, 145 Pac. 561, L. R. A. 1915D, 327. In the opinion Mr. Chief Justice Johnston said: "The streets are provided for the public in general for purposes of travel and transportation"—and cited the case of Bogue v. Bennett, 156 Ind. 478, 60 N. E. 143, 83 Am. St. Rep. 212, holding void a city ordinance which prohibited traction engines and vehicles not propelled by animal power from using the streets. The Indiana court used this language:

"But vehicles, whether moved by animal, steam, or other power, which do not require a specially constructed track, may be run upon the streets and alleys of a municipal corporation, without first obtaining the consent of the governing body thereon." Page 486 of 156 Ind., page 146 of 60 N. E. [83 Am. St. Rep. 212].

Another question asked in the majority opinion is this: "Would the city have nothing to say" if "a company or corporation owning motor vehicles had the facilities and the desire to occupy all the streets to the utter destruction of the street car business?"

The obvious answer is, Nothing whatever beyond the right to provide reasonable regulations of the new business. The city has not been made in any sense the guardian of the interests of the owners and stockholders of the street railway company, nor charged with the duty of protecting the company from competition, even though new and improved methods of transporting passengers in cities may, and possibly will in the near future, result in "the utter destruction" of the business of street railways. In the language of Judge Cooley:
"When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience, or even to the injury, of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires them; and, if the law should preclude the adaptation of the use to the new methods, it would defeat, in greater or less degree, the purpose for which highways are established." Macomber v. Nichols, 34 Mich. 212, 22 Am. Rep. 522.

Twenty–five years ago, when electricity was first demonstrated to be practical and economical for operating street cars, millions had been already invested in cable car systems, with miles of expensive tunnels in the center of the streets. Competing companies on nearby streets installed trolley lines. No

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

one supposed it was the duty of the municipalities to place obstacles in the way of the public getting immediate benefit of the new and improved method of transportation, although the competition resulted in sending most of the machinery of the cable companies to the junk pile. To quote again from Judge Cooley:

> "Improved methods of locomotion are perfectly admissible, if any shall be discovered, and they cannot be excluded from the existing public roads, providing their use is consistent with the present methods. A highway is a public way for the use of the public in general, for passage and traffic, without distinction. Starr v. Chicago, etc., R. R. Co., 24 N. J. Law, 592. The restrictions upon its use are only such as are calculated to secure to the general public the largest practicable benefit from the enjoyment of the easement, and the inconveniences must be submitted to when they are only such as are incident to a reasonable use under *impartial* ***1199** *regulations.*" Macomber v. Nichols, supra. (Italics ours.)

It is said that in 1845, after the introduction of steam to transportation and machinery, a clerk in the patent office asked to be transferred to some other department because the field of discovery and invention had been exhausted. The other day Edison, speaking of electrical inventions, said, "The surface of things has only been scratched over," and he predicted wonderful developments in the uses of electricity within the next 10 years.

On the 29th of last month the Supreme Court of Louisiana, in the case of City of New Orleans v. La Blanc, 71 South. 248, held an ordinance, purporting to regulate the jitney business, void for the reason that its provisions were found to be arbitrary and prohibitive. In the opinion it was said:

> "The jitneys are automobiles, and therefore are entitled to use the streets as matter of right, but they are automobiles used in a peculiar way, which sets them apart in a class by themselves—a fact well recognized the country over. And if, owing to this special use, special regulation is necessary for the safety and convenience of the other users of the street, such special regulation is justified, and the question of what it shall consist of is a matter within the discretion of the municipal authorities, with which the courts have no right to interfere in the absence of clear abuse. *Prohibition, however, is not regulation, and if under the guise of a regulation, a measure be in fact a prohibition, it transcends the municipal power.*" (Italics ours.)

Most of the cases cited in the briefs of defendants go no further than to hold that a city may pass ordinances regulating the jitney business. Many of them expressly deny the power to prohibit the business altogether. I do not cite them, since they are not the decisions of courts of last resort. The recent decision of the Supreme Court of Tennessee, referred to in the majority opinion, in no manner involves the question whether a city, under its general grant of power over streets, or in the exercise of its police power, or under what is termed a "general welfare clause," may enact an ordinance prohibiting jitneys from using the public streets. That decision is based solely upon a recent statute enacted by the Legislature, requiring jitneys, before being permitted to operate on the streets of any city, to furnish surety company bonds in the sum of $5,000 to indemnify persons who might be injured by the operation of the jitneys.

The court should take judicial notice of the fact that the operation of jitneys, though of very recent origin, is by no means confined to cities. On the contrary, in the

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

more densely populated places of the country jitneys are operated between cities and in rural districts. If a city, solely in the interest of a street railway company, may prohibit jitneys from using the streets to compete with the business of the company, I can see no reason why the Legislature, if it see fit, may not protect the capital invested in interurban trolley lines, and, solely for that purpose, prohibit jitneys from using the public highways to carry passengers from town to town. That the Legislature has not authorized a city to do this is sufficient reason why the recent Tennessee decision should not be followed; and until the cold day comes when the Legislature of Kansas passes an act attempting to protect investment in street railways by giving them the exclusive right to carry passengers on public highways or authorizing cities to give them such a monopoly of the streets, I think the courts should declare such an ordinance unreasonable, oppressive, and therefore void.

I am authorized to say that Mr. Chief Justice JOHNSTON concurs in this dissent.

All Citations

96 Kan. 820, 153 P. 1194, L.R.A. 1916D,246

Footnotes

* State Report Title: Desser v. City of Witchita

End of Document © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Citing References (61)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	**1. Decker v. City of Wichita** 202 P. 89, 89+ , Kan. Appeal from District Court, Sedgwick County. Suit by A. T. Decker and others against the City of Wichita and others for an injunction. Judgment for defendants on demurrer, and...	Nov. 12, 1921	Case		—
Discussed by	**2. Brown v. City of Topeka** 74 P.2d 142, 145+ , Kan. Appeal from District Court, Shawnee County, Division No. 2; Paul H. Heinz, Judge. Action by Dana C. Brown and others against the City of Topeka and others. From an adverse...	Dec. 11, 1937	Case		—
Discussed by	**3. Brown v. City of Topeka** 58 P.2d 64, 65+ , Kan. Appeal from District Court, Shawnee County, Division No. 2; Paul H. Heinz, Judge. Action by Dana C. Brown and others against the City of Topeka and others. From a ruling sustaining...	June 06, 1936	Case		—
Discussed by	**4. People's Taxicab Co. v. City of Wichita** 34 P.2d 545, 547+ , Kan. Appeal from District Court, Sedgwick County, Division No. 1; Ross McCormick, Judge. Action by the People's Taxicab Company against the City of Wichita and others. Judgment for...	July 07, 1934	Case		—
Discussed by	**5. Ex parte Irish** 250 P. 1056, 1057+ , Kan. Original application of H. P. Irish for a writ of habeas corpus to secure his release from the custody of F. A. Ernst, City Marshal of Holton. Petitioner discharged. Dawson, Burch,...	May 08, 1926	Case		—
Discussed by	**6. Star Transp. Co. v. Mason City** 192 N.W. 873, 881+ , Iowa Appeal from District Court, Cerro Gordo County; C. H. Kelley, Judge. Action in equity wherein plaintiff seeks to restrain the defendants from enforcing an ordinance, on the ground...	Apr. 03, 1923	Case		—
Cited by	**7. Weeks v. City of Bonner Springs** 518 P.2d 427, 433 , Kan. After a chiropractor was granted an occupancy permit to use a dwelling house in a zoned residential area as a professional office, persons living in the vicinity brought an action...	Jan. 26, 1974	Case		—
Cited by	**8. Phillips v. Vieux** 504 P.2d 196, 201 , Kan. Action to determine validity of proposed use of land under a zoning ordinance. The Butler District Court, George S. Reynolds, J., held that plaintiff's proposed use was...	Dec. 09, 1972	Case		—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**9. City of Atchison v. Beckenstein** 54 P.2d 926, 928 , Kan. Appeal from District Court, Atchison County; Lawrence F. Day, Judge. Proceeding by the City of Atchison against M. Beckenstein for violation of a city ordinance. From a judgment of...	Mar. 07, 1936	Case		—
Cited by	**10. City of Wichita v. Home Cab Co.** 42 P.2d 972, 974+ , Kan. Appeal from District Court, Sedgwick County; Grover Pierpont, Isaac N. Williams, and Robert L. Ne Smith, Judges. Action by the City of Wichita against the Home Cab Company and...	Apr. 06, 1935	Case		—
Cited by	**11. Tandy v. City of Wichita** 266 P. 930, 931 , Kan. Appeal from District Court, Sedgwick County, Division No. 2; Thornton W. Sargent, Judge. Action by D. E. Tandy and others against the City of Wichita and others for an injunction....	May 05, 1928	Case		—
Cited by	**12. Slocum v. City of Wichita** 217 P. 297, 297 , Kan. Appeal from District Court, Sedgwick County. Action by C. D. Slocum against the City of Wichita. From a judgment for defendant, plaintiff appeals. Affirmed.	July 11, 1923	Case		—
Cited by	**13. Smith v. Hosford** 187 P. 685, 686 , Kan. Appeal from District Court, Wyandotte County; Action by Frank Smith against R. R. Hosford, Building Inspector of Kansas City, Kan., to compel him to grant to plaintiff a permit to...	Feb. 07, 1920	Case		—
Cited by	**14. Emporia Telephone Co. v. Public Utilities Commission of Kansas** 154 P. 262, 263 , Kan. Appeal from District Court, Shawnee County. Action by the Emporia Telephone Company against the Public Utilities Commission of the State of Kansas. From a judgment for plaintiff,...	Jan. 08, 1916	Case		—
Cited by	**15. City of Lenexa v. Puhr** 97 P.3d 1072, 1072+ , Kan.App. Steven Michael Puhr appeals his convictions of speeding and driving without a license. We affirm. Officer Jo Sandefur stopped Puhr after his radar gun indicated Puhr was speeding...	Sep. 24, 2004	Case		—
Cited by	**16. Edgington v. City of Overland Park** 815 P.2d 1116, 1123 , Kan.App. Nominee for city council brought civil rights action against the council following rejection of his nomination. The District Court, Johnson County, James W. Bouska, J., granted...	July 26, 1991	Case		—
Cited by	**17. Schlesinger v. City of Atlanta** 129 S.E. 861, 868 , Ga. Error from Superior Court, Fulton County; Geo. L. Bell, Judge. Action by S. F. Schlesinger and others against the City of Atlanta. Judgment for defendant, and plaintiffs bring...	Sep. 22, 1925	Case		—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**18. Denny v. City of Muncie** 149 N.E. 639, 641+ , Ind. Appeal from Circuit Court, Blackford County; Victor H. Simmons, Judge. Suit by Sumner B. Denny against the City of Muncie and others. From an adverse judgment, plaintiff appeals....	Nov. 24, 1925	Case		—
Cited by	**19. Frick v. City of Gary** 135 N.E. 346, 347+ , Ind. Appeal from Superior Court, Lake County; Charles E. Greenwald, Judge. Action by Henry H. Frick against the City of Gary to restrain the enforcement of a city ordinance. Judgment...	May 12, 1922	Case		—
Cited by	**20. Red Star Motor Drivers' Ass'n v. City of Detroit** 208 N.W. 602, 603 , Mich. Appeal from Circuit Court, Wayne County, in Chancery; Ormond F. Hunt, Judge. Suit by the Red Star Motor Drivers' Association and others against the City of Detroit and others. ...	Apr. 14, 1926	Case		—
Cited by	**21. Schott v. Weiss** 105 A. 192, 193 , N.J.Err. & App. Appeal from Supreme Court. Action by Frank Schott against Benjamin Weiss. Judgment for plaintiff, and defendant appeals. Affirmed.	Nov. 18, 1918	Case		—
Cited by	**22. Morin v. Nunan** 103 A. 378, 379 , N.J.Sup. Samuel Morin was convicted before Andrew L. Nunan, recorder of the township of Weehawken, and he prosecutes certiorari to review the legality of his conviction. Conviction...	Mar. 21, 1918	Case		—
Cited by	**23. Ex parte Tomlinson** 22 P.2d 398, 402 , Okla.Crim.App. Original habeas corpus proceedings by E. L. Tomlinson, alleged to be unlawfully restrained by the Chief of Police of Oklahoma City. Writ granted, and petitioner discharged....	May 19, 1933	Case		—
Cited by	**24. Huffman v. City of Columbia** 144 S.E. 157, 159 , S.C. Original application by C. J. Huffman and others against the City of Columbia and others to enjoin the enforcement of an ordinance. Petition dismissed.	July 24, 1928	Case		—
Cited by	**25. Cushing v. White** 172 P. 229, 233 , Wash. Department 1. Appeal from Superior Court, Spokane County. Suit by Frank Cushing and others against John B. White, Prosecuting Attorney of Spokane County, and others. From a...	Apr. 16, 1918	Case		—
Mentioned by	**26. Lines v. City of Topeka** 577 P.2d 42, 47 , Kan. The Shawnee District Court, Division No. 5, Kay McFarland, J., entered order requiring city to reinstate its chief building inspector with back pay, and city appealed and building...	Apr. 01, 1978	Case		—

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**27. Capitol Cable, Inc. v. City of Topeka** 495 P.2d 885, 893 , Kan. Declaratory judgment action to determine the validity of city's cable television enabling ordinance and franchising ordinance issued pursuant thereto. The Shawnee District Court,...	Apr. 08, 1972	Case		—
Mentioned by	**28. Mader v. City of Topeka** 189 P. 969, 973 , Kan. Habeas Corpus by August M. Mader against the City of Topeka and others. Writ denied.	May 08, 1920	Case		—
Mentioned by	**29. Kansas City v. Jordan** 163 P. 188, 191 , Kan. Appeal from District Court, Wyandotte County. Harry Jordan was complained of for violation of an ordinance of the City of Kansas City, and from the trial court's ruling quashing...	Feb. 10, 1917	Case		—
Mentioned by	**30. City of Marysville v. Standard Oil Co.** 27 F.2d 478, 484 , C.C.A.8 (Kan.) Phillips, District Judge, dissenting. Appeal from the District Court of the United States for the District of Kansas; John C. Pollock, Judge. Suits consolidated for trial by the...	May 28, 1928	Case		—
Mentioned by	**31. Liberty Highway Co. v. Michigan Public Utilities Commission** 294 F. 703, 709 , E.D.Mich. In Equity. Suit by the Liberty Highway Company, an Ohio corporation, and Edward Kabel, a citizen of Ohio, against the Michigan Public Utilities Commission, the five members of...	Dec. 11, 1923	Case		—
Mentioned by	**32. Schoenfeld v. City of Seattle** 265 F. 726, 732 , W.D.Wash. In Equity. Suit by Alvin M. Schoenfeld against the City of Seattle, in which a petition in intervention was tendered by Edward W. Bundy. Permission to file petition in...	June 09, 1920	Case		—
Mentioned by	**33. Quigg v. State** 93 So. 139, 141+ , Fla. Error to Circuit Court, Dade County; H. Pierre Branning, Judge. Proceeding in habeas corpus by the State of Florida, on the relation of E. H. Radel, Jr., against Leslie Quigg,...	Aug. 02, 1922	Case		—
Mentioned by	**34. Chicago Motor Coach Co. v. City of Chicago** 169 N.E. 22, 28 , Ill. Suit by the Chicago Motor Coach Company and others against the City of Chicago and others. From an adverse decree, complainants appeal. Reversed and remanded, with directions....	June 19, 1929	Case		—
Mentioned by	**35. Solberg v. Davenport** 232 N.W. 477, 482+ , Iowa Appeal from District Court, Woodbury County; Robt. H. Munger, Judge. Action in equity asking for an injunction restraining the enforcement and carrying out of the provisions of...	Sep. 26, 1930	Case		—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**36. Melconian v. City of Grand Rapids** 188 N.W. 521, 524 , Mich. Appeal from Superior Court of Grand Rapids, in Chancery; Major L. Dunham, Judge. Suit by Harry Melconian and others against the City of Grand Rapids, to enjoin the enforcement of...	June 05, 1922	Case		—
Mentioned by	**37. Schultz v. City of Duluth** 203 N.W. 449, 450 , Minn. Appeal from District Court, St. Louis County; H. J. Grannis, Judge. Suit by Carl H. Schultz against the City of Duluth, in which the Duluth Street Railway Company intervened. From...	Apr. 24, 1925	Case		—
Mentioned by	**38. State v. Johnson** 243 P. 1073, 1080 , Mont. Appeal from District Court, Lewis and Clark County; W. H. Poorman, Judge. Samuel S. Johnson was charged with owning and operating an automobile, motor vehicle, and bus line for...	Jan. 26, 1926	Case		—
Mentioned by	**39. Eastern Ohio Transport Corp. v. Village of Bridgeport** 185 N.E. 891, 895 , Ohio App. 7 Dist. Action by the Eastern Ohio Transport Corporation against the Village of Bridgeport and others. From an adverse judgment, plaintiff appeals.-[By Editorial Staff.] Judgment for...	Dec. 15, 1932	Case		—
Mentioned by	**40. McGuire v. Wilkerson** 209 P. 445, 448 , Okla.Crim.App. Habeas corpus will lie to discharge a prisoner restrained of his liberty by virtue of a conviction based upon a void ordinance. The use of the streets as a place of business, or as...	Oct. 02, 1922	Case		—
Mentioned by	**41. Ex parte Luna** 266 S.W. 415, 416 , Tex.Crim.App. Original application for writ of habeas corpus by Luis Luna. Order refusing to discharge relator affirmed.	Nov. 26, 1924	Case		—
Mentioned by	**42. City of San Antonio v. Fetzer** 241 S.W. 1034, 1037+ , Tex.Civ.App.-San Antonio Appeal from District Court, Bexar County; R. B. Minor, Judge. Suit by A. Fetzer and others to restrain the City of San Antonio and its officials from enforcing an ordinance. From a...	May 10, 1922	Case		—
Mentioned by	**43. State v. Seattle Taxicab & Transfer Co.** 156 P. 837, 842 , Wash. Department 1. Appeal from Superior Court, King County; King Dykeman, Judge. The Seattle Taxicab & Transfer Company was convicted of violation of taxicab law and fined. From the...	Mar. 29, 1916	Case		—
Mentioned by	**44. Carson v. Woodram** 120 S.E. 512, 513 , W.Va. Appeal from Circuit Court, Cabell County. Suit by Asa Carson against Benjamin Woodram and others. From a decree dissolving a temporary injunction, plaintiff appeals. Reversed,...	Dec. 11, 1923	Case		—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**45. Mr. Rod Ludwig** XVI Kan. Op. Atty. Gen. 55 You ask us to review a charter resolution adopted by the Board of County Commissioners of Mitchell County whereby said Board exempted the county from the provisions of K.S.A....	July 12, 1982	Administrative Decision		—
—	**46. Constitutionality of statutes or ordinances for taxation of common carriers by automobile** 75 A.L.R. 13 The present annotation is designed to cover the question of the constitutionality of statutes or ordinances for the taxation of public or common carriers by motor vehicles, in all...	1931	ALR	—	—
—	**47. Validity of regulations excluding or restricting automobile traffic in certain streets** 121 A.L.R. 573 This annotation supersedes that in 32 A.L.R. 752. As the title suggests, this annotation is confined to cases which consider the validity of statutes, ordinances, or other...	1939	ALR	—	—
—	**48. License fee imposed on operation of vehicles in street as double taxation of one who is subject to an occupation tax on business or occupation involving use or leasing of vehicles** 147 A.L.R. 309 The present annotation is concerned with the question whether the imposition of a license fee upon the operation of vehicles in the street amounts to objectionable double taxation...	1943	ALR	—	—
—	**49. Statutes or ordinances which apply to railroads, but not to carriers on public highways, or vice versa, as denying equal protection** 139 A.L.R. 977 There must be some natural, practical, and substantial difference between railroads and common carriers using other means of transportation in order to furnish a reasonable basis...	1942	ALR	—	—
—	**50. Validity of regulation against solicitation in street for patronage of taxicabs, etc.** 42 A.L.R. 282 Some collateral and closely related questions have been treated in other annotations: For validity of restrictions as to points at which jitney bus passengers may be taken on and...	1926	ALR	—	—
—	**51. One operating bus or stage as common carrier** 42 A.L.R. 853 In discussing the question whether one operating a bus or stage is a common carrier, the term "common carrier" is used in its modern sense as including a carrier of passengers as...	1926	ALR	—	—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
—	**52. Validity of restrictions as to points at which jitney bus passengers may be taken on and discharged** 6 A.L.R. 110 That jitney busses and their use of public streets and highways are subject to reasonable regulations seems to be well settled. Questions may arise, however, as to the...	1920	ALR	—	—
—	**53. McQuillin The Law of Municipal Corporations s 24:708, § 24:708. Regulation of motor buses—Reasonableness, uniformity, and other requisites** Ordinances and regulations relating to motor buses and other urban area passenger carriers for hire must be reasonable, and their reasonableness is subject to judicial review. An...	2019	Other Secondary Source	—	—
—	**54. Am. Jur. 2d Automobiles and Highway Traffic s 79, § 79. Character of vehicle or its use of highways; mileage—Motor carriers** Am. Jur. 2d Automobiles and Highway Traffic License or registration statutes may treat certain motor carriers as a special class for purposes of license or registration fees or taxes, such as motor carriers operating on...	2019	Other Secondary Source	—	—
—	**55. Am. Jur. 2d Carriers s 14, § 14. Buses or jitneys** Am. Jur. 2d Carriers Persons operating buses or jitneys over a well-defined route between certain terminals and for a uniform fare accepting passengers without discrimination up to the capacity of the...	2019	Other Secondary Source	—	—
—	**56. Am. Jur. 2d Highways, Streets, and Bridges s 223, § 223. Use of highways for transportation facilities and operation, generally** Am. Jur. 2d Highways, Streets, and Bridges The use of highways and streets as a facility for commercial transportation of freight or passengers by the ordinary means is incidental to and consistent with the primary purpose...	2019	Other Secondary Source	—	—
—	**57. CJS Motor Vehicles s 123, § 123. Injunction against enforcement—Insufficient showing** CJS Motor Vehicles Injunctive relief will not be granted to prevent enforcement of a regulation pertaining to public service motor vehicles where sufficient grounds are not shown for such relief or...	2019	Other Secondary Source	—	—
—	**58. AUTONOMOUS VEHICLE LIABILITY-APPLICATION OF COMMON CARRIER LIABILITY** 36 Seattle U. L. Rev. Supra 5 , 26 The future of personal transportation may be in vehicles that drive themselves, requiring little--or no--human input. Several manufacturers are currently developing these vehicles,...	2013	Law Review	—	—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Title	Date	Type	Depth	Headnote(s)
—	**59. CONSTITUTIONAL LAW-MUNICIPAL CORPORATIONS-POWER TO REGULATE USE OF STREETS** 1 Tex. L. Rev. 475 , 475 The city of San Antonio passed an ordinance regulating the use of its streets by complainants who were engaged in the business of carrying persons in automobiles from one point in...	1923	Law Review	—	—
—	**60. COMMERCIAL USE OF THE HIGHWAY AS A BASIS FOR MOTOR CARRIER REGULATION** 40 Yale L.J. 469 , 475 The part which the mammoth bus and giant truck are playing in present day transportation lends new significance to the problem of motor-carrier regulation. While the fact that...	1931	Law Review	—	—
—	**61. MUNICIPAL CORPORATIONS-REGULATION OF JITNEYS** 32 Yale L.J. 190 , 190 By its charter the city of Miami had the, power "to license, control, tax, and regulate traffic and sales upon the street." Par. H. H., sec. 3. An ordinance forbade the operation...	1922	Law Review	—	—

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Table of Authorities (27)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**1. Baxter Telephone Co. v. Cherokee County Mut. Telephone Ass'n** 146 P. 324, Kan., 1915 Appeal from District Court, Cherokee County. Action by the Baxter Telephone Company against the Cherokee County Mutual Telephone Association and others. From judgment for...	Case		”	1195
Cited	**2. Bogue v. Bennett** 60 N.E. 143, Ind., 1901 Appeal from circuit court, Grant county; H. J. Paulus, Judge. Action by Claude M. Bennett, by his next friend, against Edward Bogue and another. From a judgment in plaintiff's...	Case			1198
Cited	**3. Brown v. Nichols** 145 P. 561, Kan., 1915 Appeal from District Court, Dickinson County. Injunction by Oscar W. Brown against Walter Nichols and others. From judgment for defendants, plaintiff appeals. Reversed and...	Case		”	1198+
Cited	**4. City of Lebanon v. Zanditon** 89 P. 10, Kan., 1907 Appeal from District Court, Smith County; R. M. Pickler, Judge. Action by the city of Lebanon against E. Zanditon and another. From a judgment in favor of defendants, plaintiff...	Case			1196
Cited	**5. City of Lyons v. Cooper** 18 P. 296, Kan., 1888 Error to district court, Rice county; ANSEL R. CLARK, Judge. On September 8, 1885, the mayor and council of Lyons, in Rice county, a city of the third class, enacted an ordinance...	Case		”	1195+
Cited	**6. City of New Orleans v. Le Blanc** 71 So. 248, La., 1915 Appeal from Recorder's Court of New Orleans; J. J. Fogarty, Recorder. Hoa Le Blanc was convicted of violating an ordinance of the City of New Orleans, and appeals. Affirmed on...	Case			1199
Cited	**7. City of Seneca v. St. Joseph & G.I. Ry. Co.** 146 P. 1168, Kan., 1915 Appeal from District Court, Nemaha County. Action by the City of Seneca against the St. Joseph & Grand Island Railway Company. From a judgment for plaintiff, defendant appeals....	Case			1195

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**8. City of St. Louis v. Russell** 22 S.W. 470, Mo., 1893 Error to St. Louis court of criminal correction; R. A. Campbell, Judge. E. J. Russell was convicted of violating an ordinance of the city of St. Louis regulating livery stables. ...	Case			1196
Mentioned	**9. Denning v. Yount** 59 P. 1092, Kan.App., 1900 Error from district court, Cowley county; A. M. Jackson, Judge. Action by Walter Denning and Mahlon E. Johnson against Mary A. Yount, administratrix of George W. Yount. Judgment...	Case			1194
Cited	**10. Ely v. Norfolk Southern R. Co.** 8 S.E. 779, N.C., 1889 This was a civil action, tried at the fall term, 1887, of the superior court of Pasquotank county, before GRAVES, J. "The plaintiff alleges in this, his complaint: (1) That the...	Case			1197
Cited	**11. Ex parte Hoffert** 148 N.W. 20, S.D., 1914 Appeal from Circuit Court, Miner County; Alva E. Taylor, Judge. Petition by William Hoffert for his discharge on a writ of habeas corpus. From a judgment denying relief and...	Case			1196
Cited	**12. Ex parte Savage** 141 S.W. 244, Tex.Crim.App., 1911 Habeas Corpus by James Savage to obtain discharge from arrest for violation of an ordinance. Prosecution dismissed, and relator discharged.	Case			1196
Cited	**13. Greene v. City of San Antonio** 178 S.W. 6, Tex.Civ.App.-San Antonio, 1915 Appeal from District Court, Bexar County; S. G. Tayloe, Judge. Action by R. P. Greene against the City of San Antonio and others. From a judgment of dismissal, plaintiff appeals....	Case		”	1196
Cited	**14. In re Martin** 64 P. 43, Kan., 1901 Application of Kelley J. Martin for a writ of habeas corpus. Denied.	Case		”	1197
Cited	**15. Kansas City v. Overton** 75 P. 549, Kan., 1904 Appeal from District Court, Wyandotte County; E. L. Fischer, Judge. George Overton was convicted of violating a city ordinance, and appeals. Affirmed.	Case			1195

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**16. Macomber v. Nichols** 34 Mich. 212, Mich., 1876 This is an action on the case, in which Nichols sought to recover for an injury occasioned by his horse taking fright as he was driving along the public highway near Battle Creek...	Case		”	1198
Cited	**17. McFall v. City of St. Louis** 135 S.W. 51, Mo., 1911 Error to St. Louis Circuit Court; Matt G. Reynolds, Judge. Bill by Arthur McFall and others against the City of St. Louis and others. Judgment for defendants, and plaintiffs bring...	Case			1196+
Cited	**18. O'Neal v. Harrison** 150 P. 551, Kan., 1915 Appeal from District Court, Reno County. Action by Chester O'Neal and another, partners, etc., against W. H. Harrison and others. From judgment for defendants, plaintiffs appeal....	Case			1195
Cited	**19. Roby v. Shunganunga Drainage Dist.** 95 P. 399, Kan., 1908 Error from District Court, Shawnee County; A. W. Dana, Judge. Action by Sara E. Roby and others against the Shunganunga Drainage District and others. Judgment for defendants, and...	Case			1195
Cited	**20. Schaake v. Dolley** 118 P. 80, Kan., 1911 (Additional Syllabus by Editorial Staff.) Laws 1911, c. 125, § 2, relating to formation of private corporations, and providing that the charter board shall refuse a bank charter if...	Case			1195+
Mentioned	**21. Stark v. Geiser** 135 P. 666, Kan., 1913 Appeal from District Court, Wilson County. Action by Eli Stark against William Geiser and others. From judgment for defendants, plaintiff appeals. Affirmed.	Case			1196
Mentioned	**22. State v. Board of Com'rs of City of Hutchinson** 144 P. 241, Kan., 1914 Appeal from District Court, Reno County. Action by the State, on relation of E. T. Foote, County Attorney of Reno County, and John Beck against the Board of City Commissioners of...	Case			1195
Cited	**23. State v. Parsons Street Ry. & Electrical Co.** 105 P. 704, Kan., 1909 Original application for mandamus by the State, on relation of John S. Dawson, attorney for the Board of Railroad Commissioners, to require the Parsons Street Railway & Electrical...	Case			1195

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**24. Swift v. City of Topeka** 23 P. 1075, Kan., 1890 Commissioner's decision. Error from district court, Shawnee county JOHN GUTHRIE, Judge.	Case			1194
Cited	**25. Tomlinson v. City of Indianapolis** 43 N.E. 9, Ind., 1896 Appeal from superior court, Marion county; J. L. McMasters, Judge. Frank Tomlinson was convicted of violating an ordinance of the city of Indianapolis, and appeals. Affirmed.	Case			1196
Cited	**26. Underwood v. Fosha** 152 P. 638, Kan., 1915 Appeal from District Court, Riley County. Action by A. F. Underwood against Henry F. Fosha and others. From judgment for defendants, plaintiff appeals. Reversed and remanded, with...	Case			1195
Cited	**27. Wulf v. Kansas City** 94 P. 207, Kan., 1908 Error from District Court, Wyandotte County; J. McCabe Moore, Judge. Action by H. F. Wulf and others against the city of Kansas City and others. Judgment for defendants, and...	Case			1195

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Negative Treatment

There are no Negative Treatment results for this citation.

History

There are no History results for this citation.

Filings

There are no Filings for this citation.

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.