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110 Md. 306, 72 A. 1039

Court of Appeals of Maryland.
 PATAPSCO ELECTRIC CO.

v.

MAYOR, ETC., OF CITY OF BALTIMORE.

March 24, 1909.

Appeal from Circuit Court No. 2 of Baltimore City; James P. Gorten, Judge.

Suit by the Mayor and City Council of Baltimore against the Patapsco Electric Company. From a decree for plaintiff, defendant appeals. Affirmed.

West Headnotes

Corporations 101  **638**

[101k638 Most Cited Cases](#)


Comity secures to a corporation created by any state almost the same use of its chartered powers and privileges in the territory of the others which it enjoys in its home state; it not being permitted, however, to exercise privileges inconsistent with the policy and laws of the state to which it is foreign.

Corporations 101  **639**

[101k639 Most Cited Cases](#)

Code Pub.Gen.Laws 1904, art. 23, § 366, requires corporations incorporated under section 28 to obtain a special grant from the General Assembly and the assent and approval of the mayor and council before using the streets and highways of Baltimore. Section 6 of the city charter (Laws 1898, p. 244, c. 123) confers power on the mayor and council to regulate the use of the streets and sidewalks for electric light and other wires and poles, and to prohibit their erection or compel their removal. By sections 8, 10, and 11 power is conferred on them to grant and regulate the exercise of franchises in the city streets. Section 3 prescribes the method of fixing compensation to be paid therefor before the franchise can be


granted. Acts 1908, p. 50, c. 240, § 66, provides that no foreign corporation shall engage or continue in any kind of business in this state, the transaction of which is not permitted by the laws thereof. Held, that a foreign electric company could not without a grant from the state or city conduct its business within the city, or place or maintain any poles, wires, or cables in its public streets or highways.

Electricity 145  **9(1)**

[145k9\(1\) Most Cited Cases](#)

(Formerly 145k4)

A turnpike road is a “highway,” and a portion thereof within the limits of Baltimore is a “highway of Baltimore city” within Code Pub.Gen.Laws 1904, art. 23, § 366, and Baltimore City Charter, Laws 1898, pp. 244, 272-274, 290, c. 123, §§ 6, 8, 10, 11, and 37, relating to the use of highways in such city by electric light and power companies, and the granting of franchises for that purpose.

Electricity 145  **9(1)**

[145k9\(1\) Most Cited Cases](#)

(Formerly 145k4)

The preposition “of,” as used in Code Pub.Gen.Laws 1904, art. 23, § 366, relating to the “streets or highways of Baltimore city,” and the granting of franchises for their use to electric light and power companies, is not descriptive of or relating to title or ownership, but refers to location and municipal jurisdiction; and the expression quoted embraces streets or roads within the city limits which are currently traversed without objection by its citizens, whether the municipality has or has not acquired the legal title to the land lying under them.

Municipal Corporations 268  **697(1)**

[268k697\(1\) Most Cited Cases](#)

Inasmuch as Code Pub.Gen.Laws 1904, art. 23, § 366, and Baltimore City Charter, Laws 1898, pp. 244, 272-274, 290, c. 123, §§ 6, 8, 10, 11, 37, not only make the consent or permission of the city a

condition precedent to using its streets and highways for an electric light business, but also authorizing it to charge a fair price for franchises granted for the use of its streets, it has a direct and special pecuniary interest in preventing the unlawful use thereof by an electric company, and may, therefore, resort to injunction for that purpose.

Turnpikes and Toll Roads 391 ↪2 [391k2 Most Cited Cases](#)

That a turnpike created to afford safe and convenient ways for public travel is a highway may be almost said to be a matter of common knowledge; and that they are highways in contemplation of law is well settled.

Argued before BOYD, C. J., and BRISCOE, PEARCE, SCHMUCKER, BURKE, WORTHINGTON, THOMAS, and HENRY, JJ.

Robert Biggs and George R. Willis, for appellant.
Albert C. Ritchie, for appellee.

SCHMUCKER, J.

This is an appeal from a decree of circuit court No. 2 of Baltimore city enjoining the appellant corporation from conducting an electric lighting business within the limits of Baltimore city. The decree also required the appellant to remove from the streets and highways of the city the poles, wires, and other apparatus which had been used in connection with such business. The bill of complaint in the case alleged that the plaintiff was a municipal corporation, having full power and control over the streets, highways, lanes, and alleys within its corporate limits, and that the defendant was a corporation, created by the state of Delaware, engaged in the business of transmitting and supplying electric power by means of wires or cables; that the defendant was never granted by the state of Maryland or the city of Baltimore the right to conduct its business within the limits of the city, nor had it any franchise or right to place any of its wires, cables,

or poles in, on, or over any of the public or private streets, highways, lanes, or alleys of the city. It is further alleged that, notwithstanding the facts mentioned, the defendant wrongfully and illegally placed and is now maintaining certain of its wires, cables, and poles in, on, and over streets, highways, lanes, and alleys, which are public highways within the limits and under the control of the city and particularly on and over certain named streets, one of which, Frederick Road or Avenue, is a turnpike road, and is by means thereof distributing its electric current to its customers not only without legal authority, but in direct violation of law. The defendant answered the bill, admitting most of its allegations, including the one that it had never been granted the right either by the state of Maryland or the city of Baltimore to conduct its business within the limits of the city, but denying the averment that it had no power or right to place its wires, poles, or cables within the city limits, and insisting that the only public street on which its poles or wires were placed was Wilkins avenue, and that all of the other streets mentioned in the bill, including the Frederick Road, were private, and not public, ones, and that it had obtained the right to use that road for the purposes of its business from the Frederick Turnpike Company. The answer also asserted that the defendant having been incorporated under the laws of Delaware for the purpose of conducting, within the state of Maryland and city of Baltimore, the business of generating and furnishing electricity, and having complied with all of the laws of this state in reference to forming corporations and having erected its poles and strung its wires on private roads and property in accordance with the regulations of the inspector of buildings of the city, it had the right to conduct its business as it was doing, and should not be subjected to interruption by the plaintiff in the manner attempted by the bill of complaint. The case having been heard on bill and answer and on oral statement of facts made by counsel in open court,

the learned judge below passed a decree in conformity with the prayer of the bill, from which this appeal was taken.

The bill only charges the defendant with conducting on electric power business; but, as the court below found as a fact that it was conducting an electric light business within the limits and upon the highways of Baltimore city, and the appeal was argued before us on that basis both orally and upon the briefs, we shall assume such to have been the fact. It was also conceded that the streets occupied by the plaintiff's poles and wires other than Wilkins avenue and the Frederick Road were private streets, and that the plaintiff did not begin its operations in the city until the year 1904.

There is practically no dispute as to the facts of the case; the questions presented by the record being legal ones. The first one is whether a foreign corporation authorized by its charter to conduct an electric light and power business in Baltimore city can use the streets and highways of the city for that purpose without having first obtained a right or franchise to do so from either the city or the state of Maryland. The second question is whether the streets and avenues *1041 mentioned in the bill are streets or highways of the city within the meaning of the acts of assembly hereinafter mentioned. The third question is whether the city has the right to raise by a bill in equity the issue of the plaintiff's power to conduct its business, as it is now doing, and obtain relief by injunction.

Section 366, art. 23, Code Pub. Gen. Laws 1904, requires all corporations incorporated or to be incorporated under section 28 of that article, which it is conceded includes electric light and power companies, to "obtain a special grant from the General Assembly of Maryland and also the assent and approval of the mayor and city council of Baltimore before using the streets or highways of Baltimore city, either the surface or the ground

beneath the same." By section 6 of the Baltimore city charter (Laws 1898, p. 244, c. 123), power is conferred on the mayor and city council to regulate the use of the streets and sidewalks for electric light and other wires and poles and to prohibit their erection or compel their removal, and by sections 8, 10, and 11 the power is conferred on them to grant and to regulate the exercise of franchises in or relating to the city's highways, streets, wharves, etc. Section 37 prescribes the method of fixing the compensation, to be paid for the franchise, before it can be granted. These laws have been fully considered by us in the light of the general principles of law relating to municipal government in the cases of [Edison Co. v. Hooper](#), 85 Md. 110, 113, 114, 36 Atl. 113; [C. & P. Tel. Co. v. City](#), 89 Md. 689, 722, 43 Atl. 784, 44 Atl. 1033; [Purnell v. McLane](#), 98 Md. 589, 56 Atl. 830; [Brown v. Md. Tel. Co.](#), 101 Md. 574, 580, 61 Atl. 338. In those cases it was determined that neither domestic corporations nor natural persons could construct or maintain their lines in the streets or highways of Baltimore city without the city's consent or a franchise therefor obtained from it. The comity exhibited by the several American states toward each other secures to a corporation created by any one of them almost the same use of its chartered powers and privileges in the territory of the others which it enjoys in the one that created it. That comity, however, is always extended to foreign corporations by the domestic state in such manner as to do no violence to its own policy or injury to its own citizens, and the foreign corporation will not be permitted to exercise any powers or conduct any occupation forbidden to a domestic corporation by the laws or policy of the state. Those limitations upon the principle of comity are not only inherently just and reasonable, but they are well supported by authority. 19 Cyc. 1222-1225; 13 A. & E. Encycl. 837-842, and cases there cited. They have recently been incorporated into the statute law of this state by section 66, c. 240, p. 50, Acts 1908, which

provides that “no foreign corporation shall engage or continue in any kind of business in this state, the transaction of which by domestic corporations is not permitted by the laws thereof. ***” The application of the law thus laid down to the case before compels us to hold that the appellant, being confessedly without any grant from the state of Maryland or the city of Baltimore of the right to conduct its business within the city, is not entitled to place or maintain any poles, wires, or cables in its public streets or highways. It is conceded by both parties that of the streets of the city occupied by the plaintiff’s poles and wires Wilkins avenue is a public street of the city and the others are private streets with the exception of the Frederick Road; so that upon this branch of the case the issue is narrowed down to the question whether that road, which is the main artery and thoroughfare used by the appellant for its poles and wires, is a street or highway of the city within the meaning of the statutes to which we have referred when interpreted in accordance with the legal principles properly applicable thereto.

That a turnpike road is a highway in the ordinary acceptance of that term may almost be said to be a matter of common knowledge. The very purpose for which they are created is to afford safe and convenient ways for public travel. That turnpikes are also highways in contemplation of law is well settled. Bouvier’s Law Dictionary, p. 947; 29 Encycl. of Law, p. 3. In [Covington & Louisville Turnpike Road v. Sandford](#), 164 U. S. 578, 17 Sup. Ct. 198, 41 L. Ed. 560, it was said by the Supreme Court of the United States: “Turnpike roads established by a corporation under authority of law are public highways, and the right to exact tolls from those using them comes from the state creating the corporation.” In [Ulman v. Charles St. Avenue Co.](#), 83 Md. 144, 145, 34 Atl. 366, this court held that the owners of land abutting on that avenue which was a turnpike road constructed by a corporation under authority from the Legislature like the Frederick Road could not acquire title by

adverse possession to any portion of the bed of the avenue because it was a public road or highway. The Frederick Road, being a turnpike, is also a highway, and in our opinion the portion of it lying within the limits of Baltimore city is a “highway of Baltimore city” within the meaning of the statutes to which we have referred in this opinion. The preposition “of” used in that connection is not to be understood as descriptive of or relating to title or ownership, but as indicating location and municipal jurisdiction, and the expression “streets or highways of Baltimore city” should be held to embrace streets or roads within the limits of that city which are currently traversed without objection by its citizens in pursuit of business or pleasure, whether the municipality has or has not acquired the legal title to the land lying under *1042 them. In other words, the provisions of the statutes to which we have referred were obviously to relate, not to the title, but to the use of the streets and highways to which they refer. Leaving out of view the policy strongly advocated in recent times on economic grounds of authorizing large municipalities to grant exclusive franchises for the supply of such public utilities as water, gas, and electric light and power, the danger to the public of the presence of wires charged with deadly currents in, on, or over the thoroughfares used by the public may well have influenced the Legislature to require from persons or corporations authorized to conduct an electric light or power business to first obtain the assent and approval of Baltimore city before erecting poles or stringing wires upon any of the avenues of travel therein.

We have no doubt of the right of the city to invoke, as it has done in this case, the aid of a court of equity to restrain by injunction the unlawful continuance by the appellant of its use of the streets and highways of the city. The statutes to which we have referred, not only make the obtaining of the consent or permission of the city a condition precedent to using them for the

purposes of an electric light business, but they also authorize the municipality to charge a fair price for all franchises granted by it for the use of its streets. It has therefore a direct and especial pecuniary interest in preventing the unlawful use of its streets by the appellant. Its position in that respect is analogous to that of taxpayers seeking to enjoin the violation of a statute or ordinance which would result in an increased rate of taxation or the levy upon them of especial assessments. We have uniformly held that persons whose rights are thus injuriously affected are entitled to the aid of courts of equity by injunction to avert the threatened injury. [Baltimore v. Gill, 31 Md. 375](#); [Baltimore v. Radecke, 49 Md. 231, 232, 33 Am. Rep. 239](#); [St. Mary's Ind. School v. Brown et al., 45 Md. 310](#); [Page v. Baltimore, 34 Md. 558](#); [B. & D. P. Ry. Co. v. Pumphrey, 74 Md. 104, 21 Atl. 559](#); [Bennett v. Baltimore, 106 Md. 495, 496, 68 Atl. 14.](#)

The decree appealed from must be affirmed.

Decree affirmed, with costs.

Md. 1909.

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