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Garages as Nuisances

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Court experienced no similar difficulty in the cases of *Com. v. Union Shipbuilding Company, supra,* and *Com. v. Hazelwood Savings and Trust Company, supra,* where it was clearly recognized that the exemption extends to only *so much* of the *capital stock* as represents an investment in the wholly exempt asset.

The conclusion would seem to be irrestible that a uniform method of deduction should be employed for eliminating from the capital stock valuation all non-taxable and exempt assets.

A motion for reargument is now pending in the case of *Commonwealth v. Pennsylvania Railroad Company, supra,* and it is to be hoped that it will result either in a modification of the decision in such manner as will render it consistent with the principles established in *Com. v. Union Shipbuilding Company, supra,* or else that the Court will more clearly state why in its opinion a different rule should apply to the instant case.[13]

Leon D. Metzger

GARAGES AS NUISANCES—Several recent cases disclose a startling change in the policy of the Pennsylvania Supreme Court as to when public garages shall be deemed to be nuisances *per se.*[1] That our law can no longer be regarded as senseless to the demands of the commercial world for advances in its favor is evident. A remarkable growth in the law as enunciated by the Supreme Court can be noticed in the span of a few months.[2]

The doctrine declared by the cases discussed in a previous note and reiterated by the most recent ones mentioned above is that a public garage becomes a nuisance

[13]On September 30, 1929, the Court handed down a modified opinion as a result of the Commonwealth's motion for re-argument. Slight changes were made in the original opinion in order to delete certain erroneous conclusions of fact or misunderstandings on the part of the Court but the main conclusion was in no way modified nor was it further supported. The case of Com. v. Fall Brook Coal Co., supra, was still considered to be controlling.

[1]Burke v. Hollinger, 296 Pa. 510 (1929); Burke v. Bassett, 296 Pa. 524 (1929); Ladner v. Siegel, 296 Pa. 579 (1929).

[2]See note in 33 Dickinson Law Review 158 (March, 1929).

per se when conducted in a residential neighborhood.[3] The rule has lost much of its rigor, however, by the narrowing of the conception of the residential neighborhoods that are entitled to the protection of the rule. Two neighborhoods may be equally residential and one may be entitled to the benefit of the rule and the other may not be so fortunate.

Burke v. Hollinger[4] discloses that there are at least three distinct types of residential neighborhoods. In the first class there will be one-family dwellings, churches, libraries, an occasional grocery store, and doctors' and lawyers' offices in homes. The enumeration is doubtless not exclusive of all other uses but is merely indicative of the general types present.

In the second type of district, one which is not so exclusively residential, there may be, in addition to the uses enumerated above, the following: double-houses, schools, public or private gardens with their accessory uses. The cardinal rule *in re* garages as nuisances is equally applicable to both of these classes. Nothing is to be gained by treating them as distinct types. They are, nevertheless, called Class A and Class B.

Class C, the third type district, may of course include the above named uses and in addition: houses used for tenements, flats, apartments of any character, hotels, boarding houses, fraternities, clubs, hospitals and the like. It is essentially residential but some buildings assume a commercial aspect.

The *Burke* case says that all three classes of districts are entitled to the protection of the public garage rule but the case creates an exception to the rule. The district in which a garage was sought to be erected was unquestionably Class C. However, the district bordered or was located on the fringe of a commercial district. Such a commercial district was said to include stores, office buildings, apartment houses, newspaper plants, clubs, financial buildings but it might exclude anything of an industrial or manufacturing nature as well as noisy or dirt-making businesses. Commercial necessity requires the location of garages in residential districts bordering on such commercial districts. Being so located, the values of real estate are enhanced thereby. Being so located, it must bear the inevitable concomitancy of the higher values of real estate—lessened value of the land as home sites.

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[3]Ladner v. Siegel, 293 Pa. 306 (1928); Burke v. Hollinger, 296 Pa. 510 (1929).

[4]296 Pa. 510 (1929).

The rule in such a residential district located on the border of a commercial district is that a public garage is not a nuisance *per se* but may be shown to be one *in fact* by reason of the method of operation.

Burke v. Bassett[5] is an identical case.

Those perpetual litigants, Ladner and Siegel, are responsible for the latest case on this subject.[6] Having been denied a declaratory judgment as to what might be done with his vacant garage located in a residential district, without violating an injunction against its use as a public garage, the owner leased a portion of its space for use by the tenants of the apartment house across the street, the apartment being owned by the lessee. On being cited for contempt, the owner argued that it was being used as a private garage and not a public one. This argument the lower court did not sustain. The Superior Court did.[7] This court held that a public garage is a place where the business of storing or rendering service for automobiles for the public is conducted. The use in the instant case they held to be private and exclusive as none but the tenants of the apartment might use it. The Supreme Court held that the evil against which the rule was directed was the collection of a number of cars which use a building for storage, service and the like. The decisions were all said to be based on the injurious effect of the use of the building on adjoining owners and not at all on who used the building.

A building used by the owner of a hundred cars for storage and service would be a public garage under the rule equally with such a building used by one hundred owners of a car each. Hence the injunction had been violated and the contempt decree proper.

But the Court did not stop here. Again looking at the fact situation in the light of the *Burke* cases, it held the district involved to be of the third type, Class C. The Court said nothing as to the bordering on a commercial district. It did, however, single out this district as one which was predominately an apartment house section. Such districts were said to have lost already much of their exclusive residential value by the erection of the apartment houses. These erections had been unobjectionable, apparently. Such a district is also not entitled to the full protection of the public garage rule.

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[5]296 Pa. 524 (1929).

[6]Ladner v. Siegel, 296 Pa. 579 (1929).

[7]Ladner v. Siegel, 95 Pa. Super. Ct. 328 (1929).

The Court concluded that in such a district a garage properly built to, under, or around an apartment house is not a nuisance *per se* but its use may, from the facts of operation, become a nuisance. It was also decided that where two apartments in the same vicinity are joined in the same ownership, a garage under one building may serve both, the Court leaving the matter of the use of the garage by other owners in the immediate vicinity to the discretion of the court below. The rule as to public garages remains in full vigor in those districts outside apartment house influence.

The public garage is a nuisance in residence districts, Class A and Class B. In Class C, in portions unaffected by apartment houses, the rule is the same. In a Class C district bordering on a commercial district or affected by apartment houses the rule now is that a public garage may be a nuisance *in fact* but not *per se*.

The change in policy evidenced by these cases is a happy one. It might have been wiser to have denied the operation of the rule in any Class C district. The cases seem to foreshadow such a rule in the near future if not a complete abdication of the doctrine.

The latter portion of the *Ladner* case seems unfortunate. The public garage rule was said to depend not at all on the ownership of the cars or the building but on the injurious effect on adjoining owners. Why then is the Court so careful to limit the discretion of the lower court to the use of the garage by owners in the immediate vicinity? If the effect when used by tenants of the surrounding apartment or nearby apartments or by owners in the immediate vicinity is not injurious to adjoining owners, how can it be injurious if used by owners who do not live in the immediate vicinity? Manner of operation is to be the test regardless of the domicil of the users, be it near or far. This the Court seems to have forgotten.

Harold S. Irwin

CONSTITUTIONALITY BY LONG ACQUIESCENCE AND TACIT ASSUMPTION—An interesting field of speculation is opened to the inquiring mind by the reasoning of the courts on the weight to be given to a contemporaneous or practical construction of the constitution by an agency other than the court which has charged itself with final jurisdiction of constitutional questions. It frequently