

4-5 EDWARD VII., A. 1905

2. To prohibit telephone companies operating in cities of different classes from charging a higher rental for telephone services in a city of a lower class than it shall charge for a like service in a city of a higher class.

The rates, however, to be charged, are left to the discretion of the telephone company.

The question which arises is, whether the discrimination in charges between one city and another is such a matter of public interest and concern as to authorize the legislative action to prevent it under the police power of the state. The claim is made that a telephone company strong enough to have exchanges in several cities may and does make its charges very high in cities where it has no competition, for the purpose of reducing them to a minimum in cities where there is competition, and by this means be enabled to drive the lesser company out of business, and thus obtain a monopoly which it may use thereafter to extort higher rates from its patrons.

If this is a matter fraught with danger to the public welfare, then the classification of companies operating in two or more cities may be justified. If no public interest or concern can be subserved by such a classification, then the legislature would have no power to act in the premises. In other words, if no reason or just basis exists for the fixing of uniform rates between cities as classified by the Bill, then there is not a constitutional classification.

I have not the information concerning the telephone business such as will enable me to judge of this matter as well as the committee having this Bill in charge, who no doubt are informed as to the necessity of regulating the matters by law and, as to this matter of public concern, you are better able to judge than I.

Our court has sustained the right of the legislature to classify in many cases, for the purpose of taxation, for the purpose of municipal government in classifying cities, and in other matters too numerous to mention. Whether or not the classification is arbitrary or unreasonable depends upon the nature of the danger threatened or the wrong to be remedied. Courts will not set aside a classification as unreasonable because they may not think the classification the best that might have been adopted, but only when they can see that, beyond all rational doubt, the classification is arbitrary, unreasonable and unjust.

'Of the propriety of legislative interference within the scope of the legislative power the legislature is the exclusive judge.'

*Munn vs. Ill.*, 94 U. S., 113.

It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, with full knowledge of the facts and with the purpose of protecting the interests of the people as a whole, and the courts will not lightly hold that an Act duly passed by the legislature was one in the enactment of which it had transcended its powers.

The provisions of the Bill seem to violate no vested rights; it does not impair the obligations of contracts, nor do its provisions deny to any person or company the equal protection of the laws, and there seems to be no deprivation of property without due process of law. I am unable to see that the classification made by this Bill is unjust and unreasonable, or that the discrimination in telephone rentals, which the Bill designs to remedy, is without the police power of the state, and therefore not the subject of legislative action. If, in fact, there is a wrong to be righted, then, in my opinion, there is nothing in the Bill which makes it obnoxious to any constitutional provision.

The classification is based on population, and a further classification is made to depend on whether or not a telephone company does business in two or more cities.

Discrimination in charges between two cities cannot be in the nature of things enforced as to a telephone company doing business in only one city. And therefore, if discrimination in rates between cities is to be prevented, the classification of telephone companies doing business in two or more cities is a natural classification based on a situation made necessary by the situation, and cannot be said to be an arbitrary one.