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A. W. Gholson Jr.

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Constitutional Law—Public Utilities—Separate and Equal Accommodations in Motor Busses

In a recent North Carolina case¹ the Interracial Commission petitioned the Corporation Commission to make regulations to insure the negro traveling public separate but equal accommodations on the busses and in the passenger stations of the respondent bus companies. The petition was dismissed by the Corporation Commission on the ground that it had no power to interpret carriers by bus to be common carriers within the terms of the 1927 statute.² On appeal to the Supreme Court it was held, (1) That bus lines operating within the state are common carriers, and (2) That the Corporation Commission has plenary power under the 1927 statute to require bus lines operating between points within the state in carrying passengers for hire to provide separate bus and station accommodations for white and negro passengers.³

The legislature has authority to provide reasonable rules and regulations for the supervision of common carriers and to prevent unjust discriminations and preferences.⁴ This authority may be delegated to an administrative board or commission.⁵ The Corporation Commission is specifically vested by the 1927 statute⁶ with power to

¹ Corporation Commission v. Interracial Commission, 198 N. C. 317, 151 S. E. 648 (1930).

² The Corporation Commission was petitioned to make such regulations by virtue of §7, chapter 136, Public Laws 1927, which provides, "The Commission is hereby vested with power and authority to supervise and regulate every motor vehicle carrier under this article; to make or approve the rates, fares, charges, classifications, rules and regulations for service and safety of operation and checking of baggage of each such motor vehicle carrier; to supervise the operation of union passenger stations in any manner necessary to promote harmony among the operators and efficiency of service to the traveling public; . . . to require the increase of equipment capacity to meet public convenience and necessity; and to supervise and regulate motor vehicle carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations applicable to any and all motor vehicle carriers. . . ." N. C. Code Ann. (Michie 1927) §2613 (p).

³ Since this case the Corporation Commission has notified certain bus lines to make arrangements to provide separate, but equal accommodations, for whites and negroes in passenger stations. See Greensboro (N. C.) *Daily News*, April 30, 1930, page 1, col. 2.

⁴ Richmond & Danville R. R. Co. v. The Durham & Northern R. R. Co., 104 N. C. 658, 673, 10 S. E. 659 (1889); The Atlantic Express Co. v. The Wilmington & Weldon R. R., 111 N. C. 463, 16 S. E. 393, 18 L. R. A. 393, 32 Am. St. Rep. 805 (1892); Chicago, Burlington & Quincy R. R. Co. v. Iowa, 94 U. S. 155, 24 L. ed. 94 (1876).

⁵ The Atlantic Express Co. v. The Wilmington & Weldon R. R., *supra* note 4.

⁶ *Supra* note 2.

supervise and regulate motor vehicle carriers in matters affecting the relationship between such carriers and the traveling public. It seems clear from the language of this statute,⁷ without necessity of construction by the Corporation Commission, that the motor vehicle carriers provided for were common carriers. In accord with the policy of the state with regard to separation of races in public conveyances,⁸ the Commission should have issued orders for segregation upon the petition of the Interracial Commission.

Since the above litigation began, chapter 216, Public Laws of 1929⁹ has gone into effect, but not being necessarily involved in the case was not thereby construed, although the Court discussed it.¹⁰ The statute provides "that operators of motor vehicles or bus lines or taxicabs engaged in the transportation of passengers of one race only shall not be required to provide any accommodations for the other race." A state statute which requires the separation of the races, with equal accommodations, is not a denial of equal protection of the laws.¹¹ But no one can be excluded by a common carrier on account of color,¹² and a state law which authorizes race discrimina-

⁷The definition of terms provided by the same act defines, "the term 'motor vehicle carrier' means every corporation or person * * * owning, controlling, operating or managing any motor vehicle used in the business of transporting persons or property for compensation between cities, or between towns, or between cities and towns over the public highways of the state as public highways are defined herein." Also "the term 'service' means that motor vehicle service which is held out to the public and of which the public may avail itself at will for transportation over the public highways * * * irrespective of whether the service is on regular schedule or otherwise." Section 1, Chapter 136, Public Laws 1927; N. C. Code Ann. (Michie 1927) §2613 (j).

⁸"The policy of the legislative branch of the government is to have separation of the races—in the railroads, street cars, schools, public institutions, etc., of the state—with equal accommodations." *State v. Williams*, 186 N. C. 627, 634, 120 S. E. 224 (1923).

⁹N. C. Code Ann. (Michie 1929 Supp.) §2613 (p), amending §7, Chapter 136, Public Laws 1927, and N. C. Cons. Stat. Ann. (1919) §§3494, 3497.

¹⁰The Court said of the 1929 statute, "We think this act also authorizes the Corporation Commission to work out in good faith the manner and method left to the sound discretion of the Commission—a sane and sensible solution giving adequate and equal accommodation to the white and negro races, taking into consideration all matters including economical conditions relative to a workable solution." *Corporation Commission v. Interracial Commission*, *supra* note 1, at p. 320.

¹¹*Plessy v. Ferguson*, 163 U. S. 537, 16 Sup. Ct. 1138, 41 L. ed. 256 (1896); *Chiles v. Chesapeake & Ohio Ry. Co.*, 218 U. S. 71, 30 Sup. Ct. 667, 54 L. ed. 936 (1910).

¹²*Coger v. North West Union Packet Co.*, 37 Iowa 145 (1873); *Meisner v. Detroit, B. I. & W. Ferry Co.*, 154 Mich. 545, 118 N. W. 14, 129 Am. St. Rep. 493 (1908); *West Chester & Philadelphia R. R. Co. v. Miles*, 55 Pa. 209, 93 Am. Dec. 744 (1867). "The law imposes on the carrier the duty of transporting every citizen paying the fare demanded. This right of the citizen and duty

tion by a public carrier of passengers is unconstitutional.¹³ It is submitted therefore that the portion of the 1929 statute above set out is contrary to the equal protection clause of the fourteenth amendment.¹⁴

The statute also provides "that nothing contained in this act or the law amended hereby shall be construed to declare operators of busses and/or taxicabs common carriers." This provision appears to be superfluous. Whether a carrier is private or public depends upon the service it renders and not on legislation.¹⁵ Whether the service rendered is public or private depends on the facts, and the fourteenth amendment prevents the legislature from declaring a carrier private or public unless there is a reasonable basis of fact for so doing.¹⁶

A. W. GHOLSON, JR.

Contracts—Consideration—Family Settlement

The testator, in disposing of his property among his children, made special bequests to two of his daughters, in recognition of their love and attention to himself and their mother. From statements made by the eldest son, an executor under the will, the children drew the inference that the two daughters had, and would enforce, a valid claim for wages against the estate, unless they were paid. To avoid litigation an agreement was drawn up, and signed and sealed by the children, whereby the two daughters were to receive \$1,500 each in addition to the special bequests provided in the will and the unsigned and undated codicil. The children now seek to have the agreement set aside on the ground of lack of consideration. *Held*, that a court of equity looks with favor upon family settlements, and if asserted in

of the carrier exists by common law." U. S. v. Dodge, Fed. Cas. No. 14,976 (W. D. Texas 1877).

¹³ McCabe v. Atchison, Topeka & Santa Fe Ry. Co., 235 U. S. 151, 35 Sup. Ct. 69, 59 L. ed. 169 (1914).

¹⁴ See (1929) 7 N. C. L. REV. 391-392.

¹⁵ Waldum v. Lake Superior Terminal & Transfer Ry. Co., 169 Wis. 137, 170 N. W. 729 (1919); State v. Public Service Com., 117 Wash. 453, 201 Pac. 765 (1921); Pacific Spruce Corp. v. McCoy, 294 Fed. 711 (D. C. Ore. 1923); Terminal Taxicab Co. v. Dist. of Col., 241 U. S. 252, 36 Sup. Ct. 583, 60 L. ed. 984, Ann. Cas. 1916 D 765 (1916).

¹⁶ Frost v. R. R. Com. of Cal., 271 U. S. 583, 46 Sup. Ct. 605, 70 L. ed. 1101 (1926); Michigan Public Utilities Com. v. Duke, 266 U. S. 570, 45 Sup. Ct. 191, 69 L. ed. 445, 36 A. L. R. 1105 (1925). The state may declare a corporation a common carrier upon the application of the corporation, Corporation Commission v. Atl. Coast Line R. R. Co., 187 N. C. 424, 121 S. E. 767 (1924).