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Horace E. Stacy Jr.

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grantor's interest in real property held by them as tenants by the entirety dissolves the estate and vests the complete title in the grantee.²⁴

FRANK J. HOLROYD, JR.

Torts—Carriers—Termination of the Carrier-Passenger Relationship

The high degree of care a common carrier owes to its passenger¹ necessarily terminates when the carrier-passenger relationship ceases to exist. Hence it has become incumbent upon courts to fashion standards against which facts may be tested in order to ascertain the existence or non-existence of a carrier-passenger relationship.

Journey's End

Whether a carrier-passenger relationship has terminated often depends upon the type of common carrier involved and upon the physical place of the journey's end. If the passenger is discharged at a railroad carrier's station, the general rule is that the relation of carrier and passenger continues until the passenger has had a reasonable time and opportunity to leave the carrier's premises.² The same rule applies when the passenger alights at a bus station³ or at an airline terminal.⁴ The

²⁴ Based on OR. REV. STAT. § 108.090 (1953).

¹ For a note on the degree of care a common carrier owes to its passenger, see Note, 17 N. C. L. Rev. 453 (1939).

² *Emerson v. Carolina Casualty Ins. Co.*, 206 F. 2d 13 (8th Cir. 1953); *Young v. Baldwin*, 82 F. 2d 841 (8th Cir. 1936); *MacGregor v. Pacific Electric Ry.*, 6 Cal. 2d 596, 59 P. 2d 123 (1936); *Georgia & F. Ry. v. Thigpen*, 141 Ga. 90, 80 S. E. 626 (1913); *Sink v. Grand Trunk Western Ry.*, 227 Mich. 21, 198 N. W. 238 (1924); *Galehouse v. Minneapolis, St. P. & S. Ste. M. Ry.*, 22 N. D. 615, 135 N. W. 189 (1912); *Wessman v. Boston & M. R. R.*, 22 N. H. 475, 152 Atl. 476 (1930); *Fagan v. Atlantic Coast Line R. R.*, 220 N. Y. 301, 115 N. E. 704 (1917); *Layne v. Chesapeake & Ohio Ry.*, 68 W. Va. 213, 69 S. E. 700 (1910). See, *Pinson v. Kansas City Southern Ry.*, 37 F. 2d 652 (5th Cir. 1930). Relation of passenger-carrier continued until plaintiff leaving train had a reasonable opportunity to see about baggage and find means of getting to destination. See also, *Fulghum v. Atlantic Coast Line R. R.*, 158 N. C. 555, 74 S. E. 584 (1912). Train passenger alighted in daylight at a flag station. A conductor helped her off and placed her safely on the ground alongside the railroad track about 60 feet north of a railroad crossing. Plaintiff, in making her way to the crossing, was injured when she stepped on a wet crosstie. Carrier's motion to nonsuit was affirmed on the basis of plaintiff's contributory negligence but Clark, C. J., dissenting, stated that the plaintiff was still a passenger since she had not left the carrier's premises.

³ *Crown Coach Co. v. Whitaker*, 208 Ark. 535, 186 S. W. 940 (1945); *South-eastern Greyhound Corp. v. Graham*, 69 Ga. App. 621, 26 S. E. 2d 371 (1943).

⁴ *Delta Air Lines, Inc. v. Millirons*, 87 Ga. App., 334, 73 S. E. 2d 598 (1952); *cf.*, *Crowell v. Eastern Air Lines, Inc.*, 240 N. C. 20, 81 S. E. 2d 178 (1954). Although the airport was leased by the city of Charlotte to the air carrier (a common arrangement between municipalities and air carriers) the carrier was held liable for injuries to one of its passengers who fell in a passageway furnished for boarding the airplane of the carrier. *Accord*, *Horelick v. Pennsylvania R. R.*, 13 N. J. 349, 99 A. 2d 652 (1953).

rule is based on the fact that the carrier exercises complete control over its premises.⁵

In cases where common carriers discharge passengers upon ground not under the control or supervision of the carrier there is a distinct conflict of authority as to the obligation of the carrier after the passenger has left the conveyance. The weight of authority supports the view that the relation of carrier and passenger ordinarily ends when the passenger safely steps from the carrier's conveyance to the street.⁶ This theory is grounded on the premise that the carrier, not having control over the highway or street, is not responsible for safe passage from the street to the sidewalk.⁷ The minority view favors the rule that the relationship of carrier and passenger continues until the passenger has had a reasonable opportunity to reach a place of safety.⁸

The North Carolina rule applicable to common carriers who discharge passengers upon ground not under the carrier's control has had an interesting judicial history. In a recent decision,⁹ the court stated the rule thusly:

⁵ *Emerson v. Carolina Casualty Ins. Co.*, 206 F. 2d 13 (8th Cir. 1953); *Southeastern Greyhound Corp. v. Graham*, 69 Ga. App. 621, 26 S. E. 2d 371 (1943).

⁶ *McAlpine v. Los Angeles Ry.*, 67 Cal. App. 2d 486, 154 P. 2d 911 (1945); *Denver City Tramway Co. v. Hills*, 50 Colo. 328, 116 Pac. 125 (1911); *Sims v. Chicago Transit Authority*, 4 Ill. 2d 60, 122 N. E. 2d 221 (1954); *Ferguson v. Kansas City Public Service Co.*, 159 Kan. 520, 156 P. 2d 869 (1945); *Oddy v. West End Street Ry.*, 178 Mass. 341, 59 N. E. 1026 (1901); *Mercier v. Union Street Ry.*, 230 Mass. 397, 119 N. E. 764 (1918); *Kieger v. St. Paul City Ry.*, 216 Minn. 38, 11 N. W. 2d 757 (1943); *Smuzynski v. East St. Louis Ry.*, 230 Mo. App. 1095, 93 S. W. 2d 1058 (1936); *Wilson v. Berlin Street Ry.*, 84 N. H. 285, 149 Atl. 602 (1930); *Hudak v. Penn-Ohio Coach Lines Co.*, 73 Ohio App. 409, 57 N. E. 2d 93 (1943); *Burke v. United Electric Ry.*, 79 R. I. 50, 83 A. 2d 88 (1951); *Street Ry. v. Boddy*, 105 Tenn. 669 (1900); *San Antonio Public Service Co. v. Turpin*, 153 S. W. 2d 343 (Tex. Civ. App. 1941); *Wullbrant v. City of Seattle*, 196 Wash. 645, 84 P. 2d 123 (1938); *Welsh v. Spokane & I. E. R. R.*, 91 Wash. 260, 157 Pac. 679 (1916).

⁷ *Creamer v. West End Street Ry.*, 156 Mass. 321 (1892); *Hudak v. Penn-Ohio Coach Lines Co.*, 73 Ohio App. 409, 57 N. E. 2d 93 (1943); *San Antonio Public Service Co. v. Turpin*, 153 S. W. 2d 343 (Tex. Civ. App. 1941).

⁸ *Louisville Ry. v. Allen*, 246 S. W. 2d 443 (Ky. App. 1951); *Beahan v. St. Louis Public Service Co.*, 213 S. W. 2d 253 (St. Louis Ct. of App. 1948); *Jacobson v. Omaha & Council Bluffs Street Ry.*, 109 Neb. 356, 191 N. W. 327 (1922); *German v. Muskingum Valley Transit Co.*, 94 N. E. 2d 52 (Ohio Com. Pl. 1951); *Trail v. Tulsa Street Ry.*, 97 Okla. 19, 222 Pac. 950 (1924); *Houston Transit Co. v. McQuade*, 223 S. W. 2d 64 (Tex. Civ. App. 1949); *Wittkower v. Dallas Ry. & Terminal Co.*, 291 S. W. 619 (Tex. Civ. App. 1934); *Tri-State Coach Corp. v. Stidham*, 191 Va. 790, 62 S. E. 2d 894 (1951); *Culpeper National Bank v. Tidewater Improvement Co.*, 119 Va. 136, 89 S. E. 118 (1916); *Zalewski v. Milwaukee Electric Ry. & Light Co.*, 219 Wis. 541, 263 N. W. 577 (1936); *Will v. Milwaukee Electric Ry. & Light Co.*, 169 Wis. 38, 171 N. W. 658 (1919). *But cf. Cavazos v. Geronimo Bus Lines*, 56 N. M. 624, 247 P. 2d 865 (1952). Carrier-passenger relationship continues until the passenger is safely discharged from the conveyance in a place in which he may safely remain.

⁹ *Harris v. Atlantic Greyhound Corp.*, 243 N. C. 346, 90 S. E. 2d 710 (1956). The facts, as supported by a jury verdict for the plaintiff, showed that the place where plaintiff attempted to alight from a bus at night was at or near the north end of a parapet, not far from an intersection; and that, as he stepped off the bus onto the shoulder of the highway, his foot struck something soft and he was precipitated some ten feet onto the rock bed of a stream and knocked unconscious.

"The carrier's legal duty to its passenger continues until such time as it affords its passenger an opportunity to alight safely from its conveyance to a place of safety."¹⁰

Three North Carolina cases were cited by the court in support of this standard.¹¹ All three were rendered by bare court majorities.¹²

The problem was first seriously considered by the North Carolina court in *Wood v. North Carolina Public Service Corp.*,¹³ where plaintiff, a streetcar passenger, while alighting at a regular stopping place, "had just stepped off the car and hadn't taken a single step" when she was struck by an automobile. The majority opinion recognized that there was a conflict of authority as to the obligation of the carrier after the passenger has left the car, but chose to uphold a judgment for the plaintiff on the theory that the carrier breached its duty to protect its passenger from and warn her of danger as well as to see that she alighted in safety.¹⁴ It was not until four years later, when the court decided *Loggins v. Southern Pacific Utilities Co.*,¹⁵ that we find a determined effort on the part of the court to fashion a local standard from the conflict of authority it again recognized. The facts of the *Loggins* case disclose that plaintiff's intestate, his nine-year-old son, left a streetcar with his father to transfer to another car. As the father reached the sidewalk he asked his son about their lunchbasket. The boy, who was still in the street just a few feet from the curbing, instantly turned, reentered the streetcar, got the basket and ". . . just as he got off the car and got one step," an automobile ran over him. On trial, defendant carrier's motion to nonsuit was allowed. In sending the case back for a new trial the court announced this rule for street car carriers:

"We think a fair statement of the rule would be to say that a passenger, on alighting from a streetcar at the end of his journey, loses his status as a passenger when he has stepped from the car to

¹⁰ *Id.* at 350, 90 S. E. 2d at 713.

¹¹ *White v. Chappell*, 219 N. C. 652, 14 S. E. 2d 843 (1941); *Loggins v. Southern Pacific Utilities Co.*, 181 N. C. 221, 106 S. E. 822 (1921); *Wood v. North Carolina Public Service Corp.*, 174 N. C. 697, 94 S. E. 459 (1917).

¹² The *Wood* case was a 3-2 decision with a dissenting opinion expressing the view that the carrier-passenger relationship should be terminated when the passenger on a street car alights upon the street from the car. The *Loggins* case was also a 3-2 split in which the dissenting justices recorded no opinion. In the *White* case the court divided 4-3 with the dissenters taking the position that the carrier breached its duty in failing to warn an alighting passenger (a young child) of the known danger from an approaching automobile.

¹³ 174 N. C. 697, 94 S. E. 459 (1917).

¹⁴ The court seemed to base its decision on the fact that the carrier failed to warn its passenger of the danger of impending traffic hazards more than on the "landing in safety" theory. The North Carolina court later repudiated this idea as a duty of the carrier in *White v. Chappell*, 219 N. C. 652, 14 S. E. 2d 843 (1941). *Accord*, *Beeson v. Tri-State Transit Co.*, 146 F. 2d 754 (5th Cir. 1945); *Mississippi City Lines, Inc. v. Bullock*, 194 Miss. 630, 13 So. 2d 34 (1943).

¹⁵ 181 N. C. 221, 106 S. E. 822 (1921).

a place of safety on a street or on a highway. The question should not be made to depend entirely upon the number of steps which the passenger may take on leaving the car, but rather upon the circumstances and conditions under which he alights. He is entitled to be discharged in a proper manner and at a time and place reasonably safe for that purpose."¹⁶

It should also be noted that in the *Loggins* case the court was aided in its decision by the fact that plaintiff's intestate was a transfer passenger.¹⁷

*White v. Chappell*¹⁸ was the first North Carolina case on this point to involve a bus carrier. There, plaintiff's intestate, an eight-year-old boy, accompanied by his mother, got off the bus on the side of the road, went around to the back of the bus and when he attempted to dart across the highway was struck and killed by a passing automobile. In ruling that defendant carrier's motion for a nonsuit should have been granted, the court, referring to the *Loggins* case, stated that:

"... the ruling there that the duty of the carrier to an alighting passenger extends not only to 'a safe landing' but to 'a landing in safety' is the limit to which any of the courts have carried the principle,¹⁹ even where the passenger alights on the traveled portion of the street or highway."²⁰

Thus it seems that the North Carolina rule is a modification of the minority view in this respect: the minority rule allows the passenger time to reach a safe place after alighting from the carrier before the relation is severed; the North Carolina rule calls for "a landing in safety,"²¹ defined as the condition in which the passenger finds himself immediately after alighting. This, too, might involve an element of time; but, obtaining an immediate place of safety is manifestly different from moving to a place of safety. Hence it appears that the North Carolina rule will not be extended to designate a person with the name of "passenger" when, upon reaching his destination, he has passed through the "landing in safety" phase. Furthermore, it is now quite clear that the "landing

¹⁶ *Id.* at 225, 106 S. E. at 823.

¹⁷ This factor was recognized in the majority opinion which quoted favorably from an earlier transfer case, *Clark v. Durham Traction Co.*, 138 N. C. 77, 50 S. E. 518 (1905). There the court said: "A person in transferring from one car to the other is still a passenger, the transfer being but a part of the trip, for the whole of which the company agrees to convey in safety."

¹⁸ 219 N. C. 652, 14 S. E. 2d 843 (1941).

¹⁹ Obviously the court was not thinking of the prevailing minority view supported by cases cited in note 8 *supra*. See also, *Birmingham Ry., Light & Power Co. v. O'Brien*, 185 Ala. 617, 64 So. 343 (1914).

²⁰ 219 N. C. 652, 660, 14 S. E. 2d 843, 848 (1941).

²¹ In the *Loggins* case the court stressed the difference between a safe landing and a landing in safety. The former has reference to the act of the passenger in stepping from the car to the street; the latter to the condition in which he finds himself immediately after accomplishing this act.

in safety" rule, initially adopted for streetcar carriers, will likewise receive equal judicial sanction in cases involving bus carriers.²²

There have been a few cases where the carrier-passenger relationship has been considered when the carrier was a taxicab. As a rule, the rider usually loses his status as passenger when he opens the door and leaves the conveyance,²³ however, if the passenger has not paid his fare, the carrier-passenger relationship may continue even after the rider walks away from the cab.²⁴

If the passenger remains on the carrier after the carrier has reached the passenger's destination, some cases hold that the passenger's status continues until the passenger has had a reasonable time to leave the conveyance.²⁵ Thirty minute has been held not to be a reasonable time.²⁶

Temporary Departures

From a review of the cases involving temporary departures from the original carrier the general rule seems to be that a passenger does not lose his character as such by merely temporarily alighting at an intermediate station, with the express or implied consent of the carrier, for any reasonable or lawful purpose²⁷ such as eating breakfast,²⁸ exercising on the platform,²⁹ talking with acquaintances,³⁰ meeting someone on business,³¹ getting off the conveyance to let another passenger on,³² sending a telegram,³³ visiting a rest room³⁴ or even for the purpose of satisfying an aroused curiosity.³⁵ On the other hand the relationship has been deemed to have been severed where the passenger left the carrier's station temporarily to talk to a person on a country road³⁶ or where the

²² The rule adopted by the North Carolina court was first announced in the *Loggins* case (street car) and followed in the *White* (bus) and *Harris* (bus) cases.

²³ *Barringer v. Employer's Mutual Liability Insurance Co.*, 62 So. 2d 173 (La. App. 1952); *White v. Alleghany Cab Co.*, 29 N. Y. S. 2d 272 (Sup. Ct. 1941).

²⁴ *Tarman v. Southard*, 205 F. 2d 705 (D. C. Cir. 1953); *Dayton v. Yellow Cab Co.*, 193 P. 2d 959 (Cal. App. 1948). Both of these cases were situations where the cab driver assaulted the passenger as a result of a dispute over the price of the fare.

²⁵ *Delta Air Lines, Inc. v. Millirons*, 87 Ga. App. 334, 73 S. E. 2d 598 (1952); *Valdosta Street Ry. v. Fenn*, 11 Ga. App. 586, 75 S. E. 984 (1912); *Turner v. Wabash Ry.*, 211 S. W. 101 (Mo. App. 1919).

²⁶ *Duval v. Inland Navigation Co.*, 90 Wash. 149, 155 Pac. 768 (1916).

²⁷ *Delta Air Corp. v. Porter*, 70 Ga. App. 152, 27 S. E. 2d 758 (1943); *Wallace v. Norfolk Southern R. R.*, 174 N. C. 171, 93 S. E. 731 (1917).

²⁸ *Louisville & N. R. R. v. McCue*, 216 Ala. 616, 114 So. 218 (1927).

²⁹ *Sellers v. Southern Pacific Co.*, 33 Cal. App. 701, 166 Pac. 599 (1917).

³⁰ *Arkansas C. R. R. v. Bennett*, 82 Ark. 393, 102 S. W. 198 (1907).

³¹ *Wallace v. Norfolk Southern R. R.*, 174 N. C. 171, 93 S. E. 731 (1917).

³² *Ross v. Atlantic Greyhound Corp.*, 223 N. C. 239, 25 S. E. 2d 852 (1943).

³³ *Alabama G. S. Ry. v. Coggins*, 88 Fed. 455 (5th Cir. 1898).

³⁴ *Murray v. Cedar Rapids City Lines, Inc.*, 48 N. W. 2d 256 (Iowa 1951); *Wilson v. Pan-American Bus Lines, Inc.*, 217 N. C. 586, 9 S. E. 2d 1 (1940); *Goodman v. Queen City Lines, Inc.*, 208 N. C. 323, 180 S. E. 661 (1935).

³⁵ *Chicago, M & St. P. Ry. v. Harrelson*, 14 F. 2d 893 (8th Cir. 1926).

³⁶ *Palmer v. Willamette Valley Southern Ry.*, 88 Ore. 322, 171 Pac. 1169 (1918).

passenger does not return in time to board the conveyance before departure.³⁷

Transfers

In the cases involving transfer passengers, that is, where the passenger leaves the original carrier to board another carrier in order to complete his journey, the courts are fairly evenly divided on the question of whether a passenger retains his status as such while effectuating the transfer.³⁸

In the North Carolina case of *Patterson v. Duke Power Co.*,³⁹ plaintiff, with a transfer ticket in his hand, knocked on the door of the urban bus he was transferring to and as the bus moved off without letting the plaintiff on, the plaintiff was thrown backwards and injured. Holding that defendant carrier's motion for nonsuit should have been upheld, the court concluded that:

" . . . sound reason compels the conclusion that ordinarily a passenger who has obtained a transfer and has safely alighted from one bus with the intent to transfer to another is not a passenger while traveling on the public street for the purpose of making the transfer so as to impose upon the carrier the duty to protect him against the hazards of the street."⁴⁰

The court distinguished the *Patterson* case from *Clark v. Durham Traction Co.*⁴¹ on the ground that in the *Clark* case, plaintiff, having left the original carrier, had put his foot on the step of the second carrier's conveyance—implying that the carrier-passenger relationship had been restored. Whereas in the *Patterson* case the door of the conveyance closed as the plaintiff approached, giving clear notice that the bus was taking on no more passengers, and no actual effort was made to get aboard.⁴² Thus it appears that the North Carolina court will require, in transfer cases, some act by the transferring party to reestablish his "passenger"

³⁷ *Tuder v. Oregon Short Line R. R.*, 135 Minn. 294, 160 N. W. 785 (1917).

³⁸ That he does: *Damm v. East Penn Transportation Co.*, 120 Pa. Supp. 381, 182 Atl. 720 (1936); *Keator v. Scranton Traction Co.*, 191 Pa. St. 102 (1899). That he does not: *McAlpine v. Los Angeles Ry.*, 67 Cal. App. 2d 486, 154 P. 2d 911 (1945); *Pugh v. City of Monroe*, 6 So. 2d 83 (La. App. 1942); *O'Connor v. Larrabee*, 267 Wis. 185, 64 N. W. 2d 815 (1954). See also, *South Plains Coaches v. Box*, 111 S. W. 2d 1151 (Tex. Civ. App. 1938). When bus broke down, the passenger, on request of bus driver, continued part of the journey in a truck driven by a person not employed by the bus company. It was held that the plaintiff did not cease to be a passenger of the bus company by so doing.

³⁹ 226 N. C. 22, 36 S. E. 2d 713 (1945).

⁴⁰ *Id.* at 26, 36 S. E. 2d at 715.

⁴¹ 138 N. C. 77, 50 S. E. 518 (1905).

⁴² The court also stated that plaintiff's desire to get aboard was not communicated to the driver at a time when it could be done in safety or while the bus was open for the reception of passengers.

status before it will hold the carrier responsible for the duties imposed by reason of the carrier-passenger relationship.

HORACE E. STACY, JR.

Torts—Doctor's Liability for "Unauthorized Operations"

While performing an authorized appendectomy on the plaintiff, defendant doctor punctured cysts on the plaintiff's left ovary and drained fluid therefrom. He is charged with assault and trespass for performing the unauthorized cyst punctures.¹ Plaintiff's testimony indicated express consent only to the removal of the appendix. Defendant's evidence did not controvert this but showed by five duly qualified medical experts that the puncture of such cysts during an appendectomy is good surgical practice performed in such situations. No emergency immediately endangering the health of the patient was shown. Plaintiff appeals from the entry of nonsuit taken after the presentation of the above evidence. The decision of the lower court was affirmed on appeal.²

"In such case the consent—in absence of proof to the contrary—will be construed as general in nature and the surgeon may extend the operation to remedy any abnormal or diseased condition in the area of the original incision whenever he, in the exercise of his sound professional judgment, determines that correct surgical procedure dictates and requires such an extension of the operation originally contemplated."³

There seems to be no disagreement among the cases that consent in some form must be present for any operation.⁴ The form that this consent takes is generally spoken of as either express consent or implied consent.

Express consent is usually found when a very broad, general assent is given to the physician wherein he is told to remedy the situation⁵ or to do whatever is necessary to give relief.⁶ Consent to one operation is not, however, consent to a second.⁷ Nor can a surgeon, during an

¹ *Kennedy v. Parrott*, 243 N. C. 355, 90 S. E. 2d 754 (1956). An allegation of negligence in the cutting of a blood vessel on the ovary resulting in phlebitis of the left leg was not urged on appeal although mentioned in the pleadings and in the trial below. [Record, p. 3.]

² *Kennedy v. Parrott*, 243 N. C. 355, 90 S. E. 2d 754 (1956). Cf. RESTATEMENT, TORTS § 62, illustration 5 (1934).

³ *Id.* at 362, 90 S. E. 2d at 759.

⁴ *Wells v. Van Nort*, 100 Ohio St. 101, 125 N. E. 910 (1919); *White v. Hirshfield*, 108 Okla. 263, 236 Pac. 406 (1925); *Valdey v. Percy*, 35 Cal. App. 2d 485, 96 P. 2d 142 (1939); *Wall v. Brim*, 138 F. 2d 478 (1943).

⁵ *McClellan v. Adams*, 36 Mass. (19 Pick) 333, 31 Am. Dec. 140 (1837); *King v. Carney*, 85 Okla. 62, 204 Pac. 270 (1922); *Rothe v. Hull*, 352 Mo. 926, 180 S. W. 2d 7 (1944).

⁶ *McClees v. Cohen*, 158 Md. 60, 148 Atl. 124 (1930).

⁷ *Pratt v. Davis*, 224 Ill. 300, 79 N. E. 562 (1906).