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Public Utilities

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PUBLIC UTILITIES Ks between P/S corp. & subscriber are subj. to change by State Corp. Comm.

~~Suit by Power Co. to collect~~ $2,000 for power used. Defense:

In 1925 plaintiff extended its power line into the Fredericksburg area and began supplying 60 cycle electric current to defendant in place of 25 cycle current. It became necessary either to install new motors at defendant's plant, or to rewind the old motors, so that power could be supplied from 60 cycle current. Plaintiff agreed to make the change, and warranted that as a result of the change no more power would be used than formerly.

After the change it was found that considerably more power was used. Plaintiff company secured permission from the Corporation Commission to increase rates. Defendant refused to pay more and this suit resulted.

Held: Contracts between public service corporations and their subscribers (with some statutory exceptions) are subject to change in rates as ordered by the Corporation Commission. But a customer of an electric company has the right to apply to Corporation Commission for lower rates where schedule fixed by commission is unreasonable because of peculiar situation of customer.

PUBLIC UTILITIES "Free Pass" Case 2 S.E.2d 441.

The S Bus Co. operates busses in South Eastern U.S. It ordered some new busses from a concern in Philadelphia. It sent 6 employees, one of whom was H, to drive the new busses back. The S Bus Co. secured "free" passes from the A Bus Co. for these men. H was killed while riding on the A Bus Co.'s bus near Natural Bridge due to the negligence of the driver of the A Bus Co.'s bus. The "free" pass contained a clause exempting the A Bus Co. from liability whether negligent or not. Under Hepburn Act the Bus Co's may interchange "free" passes for the officers and employees of each. The trip was an interstate one. State problems involved.

1. Does Va. law govern or Federal law?
2. Is such a provision valid if transportation is for a consideration? If it is free?
3. Is this a "free" pass? 4. If the negligence is gross does that make a difference?

A.1. Federal law because the trip was an interstate one.

2. If there is consideration such a stipulation is invalid as against public policy as tending to encourage negligence. If it is free then by the Federal law it is valid. If one accept a free pass he must accept it with the condition or refuse it and pay full fare.

3. By a four to three decision this was held to be a free pass. It pays "free". It was issued as a courtesy and not under a duty. There more expectation that the courtesy would be returned later is not quid pro quo or the conventional inducement.

4. If defendant was grossly negligent it is liable as it is always against public policy that one be exempt from liability for gross or wanton negligence. Note: A driver travelling on a "free" pass who looks after the cattle that are being shipped gives value indirectly.

PUBLIC UTILITIES Taxicab Driver's Duty of Care 178 Va. 325, 339

P was injured while a passenger in D's taxicab. How, if at all, should an instruction to the jury on the degree of care owed by D differ from the ordinary case of a passenger in a car?

A taxicab company is a common carrier of passengers and as such does not owe merely a duty of ordinary care, but it owes "the duty to exercise the utmost practical care, diligence, and foresight in the operation of its cab for her safety."

Note the three degrees of care owed passengers in cars in Virginia:

1. Common carriers of passengers owe the highest degree of practical care as above and liable for slight negligence.
2. If the passenger is a business visitor, as where he is being given a demonstration ride, he is owed a duty of ordinary care.
3. Where the passenger is a gratuitous guest he is owed only a duty of slight care and the driver is liable only if he is grossly negligent.

PUBLIC UTILITIES Contributory Negligence — RR 2301. 179 Va.609.
P was a passenger on a branch of the C&O on a combination freight and passenger train. He had purchased a ticket to point X. As there was a "heavy train" and an upgrade the conductor asked P and two other passengers if they would mind getting off the train while it was slowed down so he would not have to stop. They all agreed to do so. But as P was about to alight,, the conductor said to him, "You are the oldest. Let the others get off first." They did. By this time the train was past the station and going even slower so P got off and hurt his ankle on a rock which he saw but did not expect to hit. He recovered a $500 verdict.
Held:(3 judges dissenting). He is barred by his own contributory negligence. There was no pressure used on him to get off. He voluntarily did a risky thing and cannot shift the loss to the C&O. Dissenting judges said that if passenger gets off moving train to help the railroad,and at its request railway should assume risk of injury.

PUBLIC UTILITIES No negligence in Bus Stop 130 Va.293.
P was passenger on D's bus. D stopped the bus behind another stopped bus and allowed four passengers to alight. A paving block was missing and the hole was full of water. It was raining. P stepped into the hole and fell. Is D liable?
Held: No. There was no negligence in failing to see the hole and warn P. With the rain and the water the hole was not easily seen. When the photographer took a picture of the hole he removed the water as otherwise the hole would not show up. Of course the hole was there,but that is not the question. The question is whether hole should have been seen,and as it was not negligence not to see it there is no case. It was admitted that ordinance indicating bus stops made no difference one way or another as such stops are frequently occupied.

PUBLIC UTILITIES--Liability of Bus for loss of baggage Limited 181 Va.697.
P took D's bus from Norfolk to Richmond. D lost one of her checked handbags which with its contents was worth $450. P had no actual notice of any rule limiting D's liability,though such a rule was printed on all baggage checks and posted in its ticket offices, the limitation being $25 unless an additional sum was paid for excess value. V.S.6-110 reads, "No agreement made by a transportation company for exemption from liability for injury or loss occasioned by its own negligence..shall be valid"?
Held:P can recover only $25. The statute quoted above has been superseded, so far as motor transportation is concerned, by a later statute V.S. 58-816 ,which gives the State Corporation Commission power to approve reasonable rules and regulations about baggage. As D had these rules duly filed in the office of the State Corporation Commission where they are open for inspection; and as D had done everything required by way of giving notice to its customers,and as these rules had been approved by the State Corporation Commission,they are valid and binding whether P know about them or not.

PUBLIC UTILITIES Limitation on Rt. of Eminent Domain 182 Va.70.
P owned a grist mill. The property was condemned to make way for a public highway. P contended that since he was engaged in a public calling which had the right of eminent domain his property could not be taken except by special legislative act.
Held: The above principle does not apply where the party making the claim is free to withdraw from such calling at any time. There is also authority that it does not apply as against the State itself,but only when private corporation or persons having the right of eminent domain seek to condemn the property of others having a like right.

PUBLIC UTILITIES Unilateral Enforcement of Segregation Laws 182 Va.760.
D, a colored person, entered a street car. There was one vacant seat towards the front. She sat in it and refused to move when requested by the operator and refused to listen to the operator when he attempted to explain the law to her. D was fined $5.00. Is the fine proper?

Held:No.(2 judges dissenting)the operator was under a duty to enforce the law as to both white and colored people. He did not ask a white person in the back to exchange seats with a colored person in front. He said only "I don't care where you sit as long as you go to the back". D was under no duty to pay any attention to any such unilateral enforcement of the segregation laws.

PUBLIC UTILITIES SCC can't institute retroactive rate order 184 Va.6.

The X Power Co. established rates on May 1,1939. In 1941 it lowered its rates voluntarily except in the City of Y. The Commonwealth of Va. on the relation of the City of Y seeks an order from the Corporation Commission declaring such rates unreasonable and void as applied to City of Y and ordering refunds as of 1941. Has the Corporation Commission jurisdiction to make such an order?

SCC Held: No. Under present constitution and statutes no rate order of the Commission can be retroactive. It may "prescribe" rates for the future only.

ICC Note: Under Federal statutes the Interstate Commerce Commission(unlike the Va. State Corporation Commission)is given the express power to declare rates unreasonable and discriminatory retroactively, and to award reparation.

PUBLIC UTILITIES Constitutional Law Segregation of interstate passengers unconst. as burden on I.C. 184 Va.24.

Is a state statute segregating colored and white passengers valid with respect to those persons who are taking interstate trips?

Held: Yes. Congress has not yet seen fit to pass laws on this subject.

Inaction by Congress in matters affecting interstate commerce could mean(1)Where uniformity is desirable states cannot legislate.(2)Where local police regulations are desirable the states can legislate until Congress sees fit to intervene. The state statute herein involved is of the latter class. It would create an intolerable situation for interstate colored and white passengers to mix on buses and trains while intrastate colored and white passengers were segregated. Note: This case was reversed by a 6-1 decision of the U.S. Supreme Court, 66 Sup.Ct.1050. The court held that one uniform rule was desirable throughout the country, and that the statute was a burden on interstate commerce.

PUBLIC UTILITIES Inns 184 Va.943.

P was a member of the Chamber of Commerce of the City of M. D owned a fine hotel. D entered into a contract with the Chamber of Commerce to furnish a dinner to its members. D served every member but P who then sued D on the theory that D had violated a common law duty owed by an Inn to its guests. D demurred.

Held: P was not a guest. A man who gets his hair cut at the hotel barber shop or uses the pay phone or gets a meal at the hotel restaurant does not by such an act become a guest in the absence of any intention to get a room. The relationship of the parties in such a case is restaurateur and patron. There is no common law duty owed by the proprietor of a restaurant to accept anyone's patronage. Demurrer sustained.

PUBLIC UTILITIES 2303. 187 Va.214.

A company rule required colored passengers to sit in the back. P, a colored passenger in an interstate trip, refused to do so. Is she guilty of any crime?

Held: No. The Company by its rule cannot make a violation of a rule a crime, nor can the legislature delegate any such power to a public utility, nor can the segregation laws be enforced by denominating a mere refusal to move disorderly conduct.

Note: This case does not hold that she could not have been removed from the bus for violation of the rule; only that violation of a rule is not for that reason only, a crime, even though a statute purports to make violation of public utility rules crimes.

PUBLIC UTILITIES State to pay rental value when taking over 186 Va.481. P/U

Due to strikes the C Ferry Co. ceased to operate its ferries. Pursuant to statute the State took over their operation, and made $400,000 profit in one year on property listed for taxation at $240,000. The Co. is entitled to a return of its property at any time it is in a postion to operate. The Co. contends it is entitled to all the net profits as well as compensation for wear and tear. The State contends it is entitled to 6% on its investment plus wear and tear. Which is right?

Held:(2 judges dissenting)Neither is right. The State should pay a reasonable rental, and the case was remanded to determine a reasonable rental. The State is not operating the Ferry as an agent of the Company or using its sovereign powers to break a strike. The State did not take over a going business. The Co. would be losing money instead of making it but for the action of the State. On the other hand there is no evidence that 6% interest on the investment is a reasonable rental. What the State actually made, the fact that the State's charges cannot be reduced by the Corporation Commission, that strikes against the State are in a class by themselves, the value of the property used, and many other factors should be considered in arriving at a fair rental.

PUBLIC UTILITIES--CONSTITUTIONAL LAW Intrastate portion of segregated bus act is Const. 188 Va.726.

Mrs. New was a colored woman. She was a passenger on an intrastate trip and insisted on sitting in the white portion of the bus in spite of courteous explanations and requests to move. She was finally ejected, no more force than necessary being used. She sued the Bus. Co. claiming that the State law was invalid and that the seat to which she was assigned did not have an adjustable back rest and hence that facilities were not equal.

Held: For defendant. The seat to which she was assigned was substantially as good as the one she was sitting in. Some seats have to be in back and some in front and some over wheels, absolute equality is not required.

The decision of the U.S.Supreme Court prohibiting segregation in interstate trips does not make the Va. law invalid as to intrastate trips which are far more frequent. The legislature intended to segregate the races on trains and buses as far as possible. Hence the fact that it may not be possible to do this in 100% of the cases does not cause the whole act to fail. The court in effect held that the statute applied to(1)Interstate trips(2)Intrastate trips, and was severable. Hence even though invalid as to the former it is valid as to the latter.

PUBLIC UTILITIES Liability of Common Carrier of goods given lesser rate 188 Va.869.

P shipped household goods from Bristol,Va. to Chattanooga,Tenn. by the D Truck Co. The goods were injured in transit when the van upset.

Case 1. If the carrier has no authority to ship for a lesser rate for a lesser declared value what effect would an agreement limiting liability have? None at all as the agreement would be void and the shipper could recover the full value.

Case 2. If the carrier is given the power by the Interstate Commerce Commission to charge less where value is declared less but the shipper does not agree in writing to such an arrangement, nor accept a bill of lading containing such a stipulation how much can the shipper collect if goods are destroyed in transit as above? He could collect the full value unless he agrees in writing to the limited liability or accepts a bill of lading containing such a stipulation.

Case 3.(the present one)The trier of the facts could have found and did find that there was no agreement to ship at a lower rate in consideration of a lower declared value, that the shipper was not shown the bill of lading until the goods arrived and that he then signed the bill of lading containing the lower declared value merely as a receipt for the driver when the latter delivered his damaged furniture to him. If so, the federal statute(49 U.S.C.A.20(11)) was not complied with in such a way as to absolve the D Co. from paying the full damages. Note that common carrier of goods is liable whether wreck was its fault or not.

PUBLIC UTILITIES Res Ipsa Loquitur 52 S.E.2d 129; 189 Va.258.

P was thrown out of an open vestibule door when the train lurched while travelling some 60 miles an hour. He relied on the doctrine of res ipsa loquitur and proved only that he was a passenger and the fact of the accident. Defendant proved that all vestibule doors were properly closed when the train left Washington,D.C. the accident having occurred a short distance before the train reached Quantico. There is a possibility that third parties had opened the door but no proof of such fact. The trial court set aside a verdict for P.

Held: Verdict for P reinstated. The defendant has failed to sustain the burden of going forward with the evidence in that it has not shown that third parties did open the door, or that, even if they did, that it should not have discovered that fact and closed the door. The fact that a third party may be to blame does not necessarily prevent the doctrine of res ipsa loquitur from applying as for example in the derailment cases.

PUBLIC UTILITIES Trunks misdelivered—liability of Carrier 52 S.E.2d 102, 189 Va.301.

Miss P lived at Narrows, Va., and left to attend R.P.I. in Richmond. She delivered to the D Express Co. two trunks and two cartons to be sent to 828 Park Ave. in Richmond. This building was being repaired and was not quite ready for occupancy so Miss P stayed in town as directed by Mrs. G who was in charge of administration. When the parcels arrived Mrs. G directed that they be put in the girls gymnasium. The two cartons disappeared. Miss P had paid an extra charge of 40 cents to take care of a $500 valuation

Q.1. If D used due care to make a proper delivery does that excuse it from liability? No. A carrier or other bailee delivers at its peril and it cannot exempt itself from liability by delivering to the wrong person regardless of the care used.

Q.2. If Mrs. G was Miss P's agent to receive the parcels has there been a good delivery? Yes, and the agency might arise by implication. This is a question of fact for the jury.

Q.3. Is D liable as an insurer because of the extra 40 cents paid to him? The only effect of the payment is to increase D's liability(if liable)from $50 to $500. It does not make D a guarantor that Miss P will personally receive the articles or enlarge the scope of D's undertaking.

Q.4. Upon what plausible theory(besides the implied agency of Mrs.G to receive the parcels) might D escape liability?If delivery is made impossible by the absence of the consignee then D may store the goods as warehouseman. He then ceases to be liable as a common carrier and becomes liable only for negligence. If storage in the girls gymnasium was due care and the goods were lost without the fault of D it would not be liable.

PUBLIC UTILITIES Discontinuance of 2 passenger trains. 189 Va. 612.

The C&O Ry. petitioned the State Corporation Commission for permission to discontinue two passenger trains operating on its James River Division between Richmond and Lynchburg. It was losing $5,000 per month out of pocket operating costs. There are adequate bus connections. Other arrangements can be made for the carriage of the mails. Even if the service was greatly improved very few people would patronize the trains in question. The State Corporation Commission allowed the discontinuance.

Held:(1) Facts found by the Commission and supported by substantial evidence will not be overridden. (2) There is a presumption that the decision of the Commission is correct.(3) The Commission has the power to require adequate service or to relieve a public utility of the burden of public service according to circumstances.(4) In the instant case public convenience and necessity in the area served does not require the operation of these two trains at a continued and substantial loss. To conclude otherwise would approach, if not actually constitute, confiscation of private property for unneeded public service.

PUBLIC UTILITIES CONSTITUTIONAL LAW Interstate RR trip can't be segregated 189 Va. 890

Lee, a young colored man and a student at Howard University lives near Covington, Virginia. He bought a ticket at Covington to Clifton Forge on a train that operates solely in Virginia between Hot Springs to Clifton Forge by way of Covington. He took a seat on the part of the train set apart for white passengers. Before the train started he was told to move or get off. He got off, turned in the Covington--Clifton Forge ticket and bought a Covington--Washington, D.C. ticket and reentered the white section of the train. He was then arrested for violation of the Virginia segregation law. He was not asked about his ticket nor was any mention made of the rules of the railway. He was tried and convicted. What result on appeal?

Held: Conviction reversed. The Morgan case was followed. The Court said that if the Virginia segregation law was void as applied to interstate bus trips it was equally void as applied to interstate railway trips. It was urged that the train from Hot Springs to Clifton Forge was an intra-state one, but the court held that it was the character of Lee's journey, and not the character of the train which determines whether he is on an interstate or intrastate trip.

PUBLIC UTILITIES Co. seeking irregular schedule Certificate denied 189 Va. 982

P sought a certificate of convenience and necessity from the State Corporation Commission authorizing him to operate anywhere in Virginia over irregular routes and on irregular schedules as the needs of commerce might from time to time require. Such certificates are granted by the Interstate Commerce Commission on a proper showing where the routes are interstate. Section 4197y(1) defines a common carrier by motor vehicle in such a way as to include those that operate over regular or irregular routes. Other sections of the act indicate clearly that no additional certificates are to be granted as long as the carriers already serving the public give adequate service.

Held: Certificate properly refused. There is no authority to grant certificates to free lance companies who would try to get the cream of the business and leave the skimmed milk to the regular carriers. It is our State policy to protect established companies from ruinous competition. No right to operate on such a basis can be obtained merely from the definition of a "common carrier by motor vehicle" when the other sections of the act clearly forbid such competition.

PUBLIC UTILITIES Discontinuance Cases 2306. Criteria 191 Va.241.

In 1947 the A Ry. Co. petitioned the State Corporation Commission for permission to discontinue its station at Carson, Virginia. The petition was duly heard and denied. In 1949 another petition was filed and this petition was dismissed on the ground that the 1947 decision was res adjudicata in spite of the fact that the loss from the operation of the station had increased 168 %.

Held: Error. Conditions now are substantially different than in 1947. "The same principle applies here as in the case of rate hearings:--rates are never permanently fixed, but are always subject to revision--after a fair trial".

Note: In discontinuance cases, "The controlling criteria are those; the (1) character and population of the territory served, the (2) public patronage or lack of it, the (3) facilities remaining, the (4) expense of operation as compared with revenue from same, and the (5) operations of the carrier as a whole."

PUBLIC UTILITIES Liability of Bus Co. to Alighting passenger 191 Va.790

Deceased, aged 2 years was riding in D's bus with his grandmother. When they reached their destination and as the child got off the bus the grandmother turned around to ask the bus driver some questions as to the bus schedule. When the grandmother alighted the bus was started at once, the driver not giving a thought as to where the child might be. The child was crushed to death before the bus had gone five feet. Is the D Bus Co. liable?

Held: Yes. The child remained a passenger until he had reached a place of safety after alighting from the bus and was owed a very high degree of care. The driver could have seen at a glance that the child was not with the grandmother when he started the bus and he should have given her a reasonable time(at least a second or two in this case) to locate the child.

PUBLIC UTILITIES Rates Important 192 Va.292

The C&P Telephone Co. was granted an increase in rates by the State Corporation Commission. The City of Norfolk appealed. You should note the following points:

Const. auth of SCC to fix rates (1) Section 156(b) of the State Constitution reads in part: "---The authority of the commission(subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic for transportation and transmission companies shall be paramount; but its authority to prescribe any other rules,regulations or requirements for corporations or other persons shall be subject to the superior authority of the general assembly to legislate thereon by general laws;---"

Legis. function Legis. discretion (2) "In matters pertaining to establishment of rates---the Commission exercises a purely legislative, not a judicial, function. It may be said to be the legislature of Virginia, so far as rate matters are concerned."

(3) "In fixing rates within the limits of what is confiscatory to the utility on the one side, and exorbitant to the public on the other side---there is a reasonably wide area within which the Commission is empowered to exercise its legislative discretion. ---the rate of return that it allows may not be changed or set aside as confiscatory or unreasonable unless it clearly evinces an abuse of legislative discretion."

SCA must substitute order on reversal (4) Section 156(g) of the State Constitution provides, "Whenever the Supreme Court of Appeals, upon appeal, shall reverse an order of the Commission affecting the rates --- it shall, at the same time, substitute therefor such order as in its opinion the Commission should have made ----, otherwise the reversal shall not be valid. Such substituted order shall have the same force and effect(and none other)as if it had been entered by the Commission---".

Factors to determine rates (5) What are the four factors that must be ascertained in order to fix public utility rates?

(a) The value of the company's property used and useful in the rendition of its intrastate services. This is the rate base.

(b) Its annual gross revenues. (c) Its annual operating expenses.

(d) The percentage rate of return that will afford the utility a reasonable opportunity to earn a fair return on its investment. (b) and (c) assume that the Company is operated honestly and efficiently.

Rate Base

(6) In this case the Corporation Commission rejected evidence of cost of reproduction new less depreciation in determining the rate base. Two Commissioners adopted the original investment theory (with adjustments for depreciation) and one adopted the "Prudent Investment Theory". The rate base as determined by all three Commissioners was around $92,400,000. The Company did not assign cross-error because of the failure of the Commissioners to consider the cost of reproduction new.

(7) Such items as working capital and value of plant under construction but not yet in use are properly part of the rate base.

(8) In order to determine what portion of the rate base was allocable to intrastate activities the recommendations laid down in a manual prepared from studies made by a joint committee of the National Association of Railroad and Utilities Commissioners and the Federal Communications Commission were used. This was proper.

Operating Expenses

(9) In determining the reasonableness of operating expenses the Commission is not empowered to substitute its judgment for that of the owners, unless the owners have abused their discretion. It was not an abuse of discretion to set up a retirement system for company employees and to pay the money into a fund under the control of an independent trustee rather than to pay such monies on a "pay as you go" principle.

(10) Rates allowing an over all return of 6% on the rate base held within the legislative discretion of the Corporation Commission. The return should be high enough to attract some "risk capital" for needed expansions. There should be a reasonable relationship between its equity capital (stock) and its borrowed capital (bonds).

PUBLIC UTILITIES Reasonable SCC Ruling — Water Extensions 192 Va. 512

P owned land in Alexandria near the city limits. He desired to develop it. He asked the D Water Co. to extend its mains 450 feet without the deposit required of P by State Corporation Commissions' Rule No. 4 on the ground that such rule was unreasonable and void for that reason, and on the further ground that said rule had been adopted without notice to the public. Rule No. 4 was less burdensome on the public than the rule formerly in force. The gist of Rule #4 is that the applicant must deposit with the water company the amount that the cost of the extension exceeds four and one-fourth times the estimated normal annual revenue from bona fide applicants, that refunds of the amount deposited will be granted for a ten year period in case others connect with the line, that all lines shall be the absolute property of the water company, and that all amounts not refunded within ten years shall belong to the water company.

Held: The above rule is a reasonable one. To compel extensions to sparsely settled portions of the City at the sole expense of D when gross income might not even equal interest on the cost of the extension might impair its financial stability. Since the new rule was less onerous than the old one no public notice and hearings were required.

PUBLIC UTILITIES Change from Ferry to Bus Service 192 Va. 828

It was held in this case that in the light of decreasing public use of the C&O ferry from Newport News to Norfolk and increased expenses, resulting in a loss of over $200,000 per year the State Corporation Commission could rightfully allow the substitution of far less expensive bus service for the ferry service. The fact the C&O made money on its freight traffic is not a sufficient reason to compel operation of the ferry at a loss when there is no sufficient public convenience to be served thereby if busses are substituted for the ferry.

PUBLIC UTILITIES--Constitutional Law 2308. 209 U.S. at p.147 summarized in 191 Va. 409.

Void Penalties

Disobedience to the order of a railway commission materially reducing railroad rates was made subject to penalties of $2,500 to $5,000 for the first offense and $5,000 to $10,000 for each subsequent offense.

Held: Penalties are void. "When the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights". It is a denial of due process to prevent persons from taking important matters to the courts.

Note: The Supreme Court of Appeals held that a $5 to $300 penalty for operating without a license while the validity of a 3% license tax on the C&P Telephone Company's gross receipts was being contested together with a 5% penalty and interest on the amount due, were not so enormous as to intimidate the Telephone Co. from resorting to the courts to test the validity of the ordinance.

PUBLIC UTILITIES Discontinuance 195 Va.538.

The Pennsylvania Railroad Company operates some 60 miles of railway on Eastern Shore. Its operating department adopted a "rule of thumb" policy which required the discontinuance of any agency where its "out of pocket costs" exceeded five per cent of its gross revenue. It wishes to discontinue five agencies whose gross revenues exceed out of pockets costs by about 15 to 1.

Held: No discontinuance should be allowed as long as the railroad is making a profi on the station and local conditions are such that discontinuance is not in the public interest. If the rule advocated by the Railroad were adopted any railroad could select only its more profitable stations for retention and discard the less profitable ones, regardless of the present or future needs of a community.

PUBLIC UTILITIES Contracts - Rates under control of Scc can't be fixed by private agreement 195 Va. 881

The X Water Co. conveyed to the Town of V for a stated consideration certain water lines lying within the Town and by a clause in the deed agreed to furnish the Town water at the rate of five cents per 1000 gallons as long as the Town should require. Later the City of Roanoke purchased the Water Company's franchise and property. Is it bound to furnish water to the Town at the rate of five cents per 1000 gallons if that rate is unreasonably low?

Held: No, for two reasons:(1)The rates charged by the Water Co. were under the control of the State Corporation Commission and could not be fixed by private agreement;(2) the agreement was not perpetual, but terminable by either party as it lacked mutuality of promises since it did not bind the Town to take any amount of water.

It was also decided that the covenant was a personal one rather than a real one running with the properties as the X Water Co. could have fulfilled its obligations by furnishing water from any source as well as from its own properties.

PUBLIC UTILITIES Considerations in Constructing Spur track 197 Va.130.

Railroad wishes to construct a spur track that will cross Highway No.10 to serve a new industrial corporation.

Points to be noted: (a) It must submit plans to the State Highway Commissioner, (b) such crossing shall be located, constructed, and operated so as not to impair, impede or obstruct, in any material degree the highway or county road to be crossed, (c) the County Board of Supervisors must be notified, (d) the cost of the crossing must be born by the public service company, (e) the State Corporation Commission has jurisdiction over controversies involved, with an appeal to the Supreme Court of Appeals.

Held: It was not unreasonable to compel the railroad to construct an underpass at its own expense where that was feasible and the public use of the road might be materially interfered with if this were not done. Statutes are V#56-23 et seq.

PUBLIC UTILITIES "Escalator Clause" 197 Va.505.

D furnishes gas to P City. D buys this gas wholesale from X whose rates are set by the Federal Power Commission. The State Corporation Commission gave D the authority to revise its rates up or down in accordance with a reasonable formula depending on whether the rates charged by X to D went up or down. This is known as "an escalator clause" device.

Held: This device is valid. The State Corporation Commission is acting reasonably and in a legislative capacity and its rate orders on appeal must be considered prima facie just. It is only fair to raise or lower rates as costs of gas go up or down. No notice or hearing need be given in the future every time the actual rate is changed by virtue of the escalator clause as such changes are mere numerical computations based on a principle already approved after a proper notice and hearing.

PUBLIC UTILITIES--State and Local Taxation Pro-rata charges for telephone 198 Va.645

Telephone rates are regulated on a state wide basis. The City of N imposed a 3% gross receipts tax on the local receipts which was considerably in excess of customary taxes, and later shifted to a lump sum tax which was about the equivalent of the 3% gross receipts tax. The Telephone Co. was granted permission by the Corporation Commission to add these charges to the local users on a pro-rata basis in order to avoid chaos in state rate making and temptation of cities to try to collect taxes from non-residents.

Held: The Corporation Commission's order should be affirmed in so far as it permits shifting the tax to the local users for amounts in excess of normal and customary taxes. Otherwise the cities would vie with each other to charge the highest gross receipts taxes in the hope that they could in effect collect local taxes from people outside the city as a result of necessarily increased telephone rates throughout the State. This would lead to confusion, taxation without representation, and irresponsibility.

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PUBLIC UTILITIES--Interstate or intrastate commerce? 199 Va.797

The X Transfer Co. had a certificate of convenience and necessity from the Interstate Commerce Commission to transport goods in interstate commerce. It had no certificate from the State Corporation Commission to transport goods in intrastate commerce. Hence, when it carried goods from one point in Virginia to another point in Virginia it routed the shipments through Bluefield, West Virginia even though such a routing was much longer and not a normal way to carry the goods. Was it within its rights in so doing?

Held: No. This was a mere subterfuge to enable it to carry goods in intrastate commerce without the required certificate. The result would have been different if transportation through Bluefield, West Virginia, was a usual route and that route had been used in good faith.

See further 359 U.S. 171 on next page of these notes.

PUBLIC UTILITIES--Interstate or Intrastate Commerce? 359 U.S.171(1959).

199 Va.797 on p.2309 of these notes was modified by the Supreme Court of the United States. The State of Virginia had no power to collaterally attack the certificate of convenience and necessity given by the Interstate Commerce Commission which had expressly approved the circuitous routing through Bluefield, West Virginia. There should be uniformity of decision in such cases rather than have different states perhaps decide the same case differently. The Commonwealth could have proceeded under section 204(c) of the Interstate Commerce Act by alleging that the carrier had abused the certificate. It appeared, however, that the practice attacked by the State often resulted in better intrastate service due to the carrier's collection of shipments of less than full truck loads in various areas and consolidating then at the central point in Bluefield. If this was done in good faith the State cannot complain. (See Dean Ribble's summary in 45 Va.L.R. at p. 1413)

PUBLIC UTILITIES Rates Increase - Ratio of Bonds to Stock 200 Va.706.

The City of Lynchburg opposed a rate increase granted to the C&P Telephone Company by the State Corporation Commission. In this case the following principles were set forth:

(1) The utility is entitled to a fair return on its investment, and this return should be sufficiently high as to be attractive to investors of risk capital when the business is prudently operated.

(2) The Commission in its discretion may allow a sum for attrition of the rate of earning due to the constantly increasing cost of new and replacement equipment.

(3) The evidence showed that the utility's capital structure was approximately 35% bonds and 65% stock. Bond capital can be obtained at a cheaper rate than stock capital because more risk is on the latter. It was contended that the utility could save the public money by having a large proportion of the former. It was held that the ratio of debt(bonds)to ownership(stock) capital was a matter for the utility to determine, and that the rate making authorities should not interfere in the absence of clear proof of an abuse of discretion on the part of the utility. There was no such proof in the instant case.

PUBLIC UTILITIES Torts Duty in operation of bus 132 S.E.2d 712, 204 Va.

P was a passenger on D's bus in Richmond. As she neared her destination she pulled the signal cord, got up, and started to the center exit. As the bus approached the cross street it slowed down, but instead of stopping it "jerked right on off" and P fell to the floor and was injured. For some reason the signal bell did not ring and the operator of the bus did not realize that P wanted to get off. He testified that he normally slowed down at intersections and then speeded up again after clearing th intersection. The trial court set aside a $4,000 verdict for P as contrary to the la and the evidence.

Held: The trial court acted properly. D was not an insurer of P's safety. It did owe her the highest degree of practical care, but P has not shown that there was any violation of that duty. One does not make out a prima facie case by calling a jerk a sudden jerk in the absence of proved facts. It is impossible to operate a bus without some jerking and P assumed the risk of all ordinary jerking and there was no evidence here to indicate anything more than the usual slowing and accelerating of a bus while being normally operated.