Louisiana Law Review

Volume 7 | Number 1
November 1946

Constitutional Law - Interstate Commerce - Segregation Statutes

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serves to divide the gift into an equal number of portions at the time of the gift. But a gift mortis causa can only take effect in the future, at which time it shall be divided "share and share alike" among the legatees capable of taking. By the mere fact that deceased left a will, it must be presumed that he intended to die testate as to *all* of his property, unless there are words to the contrary in the testament.

The intention of the testator is of prime importance in the interpretation of acts of last will. As stated in Article 1712 of the Civil Code,[7] the testator's intention "must principally be endeavored to be ascertained, without departing, however, from the proper signification of the terms of the testament." The average layman knows little of the technical distinctions of such phrases. If it is possible to ascertain his intention without reference to those distinctions, it would seem that the rules of testamentary construction would require that this be done. Otherwise, the rules laid down in the Code for the purpose of safeguarding every individual right in the matter of distribution of estates would be lost. MARTHA E. KIRK

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — SEGREGATION STATUTES—Appellant, a negro woman who was traveling interstate in Virginia on a motor common carrier, refused to accede to a request of the driver to move to the back seat to permit white passengers to be seated.[1] She was arrested, tried and convicted under a Virginia segregation statute.[2] This act required designation of separate seating space for white and negro passengers, directed the driver "at any time when it may be necessary or proper for the comfort and convenience of the passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race,"[3] and made refusal to take a seat assigned by the driver a misdemeanor.[4] On a writ of error the conviction was affirmed by the Supreme Court of Appeals of Virginia.[5] *Held,* reversed. Seating arrangements for the different races in interstate motor travel require a single,

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7. La. Civil Code of 1870.

1. Six white passengers were standing, while there were two vacant spaces on the long rear seat. Appellant was sitting in the second seat toward the front from the long seat in the extreme rear of the bus.

2. Va. Code Ann. (Michie, 1942) §§ 4097z, 4097aa, 4097bb, 4097cc, 4097dd.

3. Va. Code Ann. (Michie, 1942) § 4097bb.

4. Va. Code Ann. (Michie, 1942) § 4097dd.

5. 184 Va. 24, 34 S.E.(2d) 491 (1945).

uniform rule to promote and protect national travel.[6] *Morgan v. Commonwealth of Virginia,* 66 S. Ct. 1050, 90 L.Ed. 982 (U. S. 1946).

This is an extraordinary case. The appellant's real interest lay in fair and equal treatment as a bus passenger.[7] Her counsel, however, were astute enough to stand on the commerce clause rather than civil rights. The upshot was a decision of importance with respect to the distribution of powers within the federal system, a decision made against a state in favor of federal power although the federal government was not represented in the case. The effect was to repudiate the position of the political branches of the government on the subject without hearing.[8]

In the field of state regulation of carriers, there have been many decisions holding that where Congress has not acted a state may validly enact legislation which has only a local influence on the course of interstate commerce.[9] However, state regulation will fall if considered an undue burden upon interstate commerce.[10] Furthermore, where the subject, in the opinion of the Supreme Court, requires uniform treatment in a national

6. Mr. Justice Rutledge concurred in the result; Mr. Justice Black and Mr. Justice Frankfurter concurred separately, assigning reasons; Mr. Justice Burton dissented, with opinion. The vacancy due to the death of Mr. Chief Justice Stone had not been filled.

7. It seems to the writer that there are more practical problems affecting the safety and speed of bus travel which, as a strictly commerce matter, overshadow the segregation factor. Buses are designed for operation by one man. The key to this arrangement is a single door at the front under the eye of the driver. Were an additional regular door installed at the rear and a conductor required to handle the passengers, would not the result be greater security for the passengers and a reduction in time consumed by the taking on and discharge of passengers? There is, of course, the problem of rate adjustment to meet increased costs, which would complicate the competitive situation. The answer is that the public interest is supreme.

8. On four occasions, segregation bills have not even reached the floor. In 1938, H.R. 8821 [83 Cong. Rec. 74 (1938)] was introduced to amend 49 U.S.C. § 3(1)(1929) to forbid segregation. The bill was not reported out of committee. In 1939, a similar bill was introduced as H.R. 182 [84 Cong. Rec. 27 (1939)] and was not reported out. Again in 1941, such a bill was reintroduced as H.R. 112 [87 Cong. Rec. 13 (1941)] and for the third time, it was not reported out. Similarly, H.R. 1925, introduced in 1945 [91 Cong. Rec. 749 (1945)] was not reported out of committee.

9. Hennington v. State of Georgia, 163 U.S. 299, 16 S.Ct. 1086, 41 L.Ed. 166 (1896); New York, N.H. & H. Railroad Co. v. New York, 165 U.S. 628, 17 S.Ct. 418, 41 L.Ed. 853 (1897); Morris v. Duby, 274 U.S. 135, 47 S.Ct. 548, 71 L.Ed. 966 (1927); Terminal R. Ass'n v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 63 S.Ct. 420, 87 L.Ed. 571 (1943).

10. Kansas City Southern R.R. v. Kaw Valley Drainage District, 233 U.S. 75, 34 S.Ct. 564, 58 L.Ed. 857 (1914); South Covington & C. St. Ry. v. Covington, 235 U.S. 537, 35 S.Ct. 158, 59 L. Ed. 350, L.R.A. 1915F 792 (1915); Southern Pacific Co. v. Arizona, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945).

sense, it has been the established theory for nearly a century that the states are without jurisdiction over it.[11]

The concluding sentences of the majority opinion are couched in the language of the uniform rule formula. Nevertheless, in reaching this conclusion, there is much discussion of the burden on interstate commerce which results from the constant shifting of seats permitted under the Virginia statute. Mr. Justice Burton, in dissenting, insisted that the

> "basic weakness in the appellant's case is the lack of facts and findings essential to demonstrate the existence of such a serious and major burden upon the national interest in interstate commerce as to outweigh whatever state or local benefits are attributable to the statute and which would be lost by its invalidation."[12]

Perhaps the majority's discussion of these burdens and conflicting state statutes was not in balancing state police power objectives with national interests in commerce, but rather in determining whether segregation was a subject on which there must be a uniform rule.

Though the facts of the principal case confine the decision to a situation involving (1) interstate motor common carriers and (2) a state statute permitting the shifting about of passengers, the broad language used in the opinion suggests wider implications.

The first question raised by this decision is whether the requirement of a uniform rule invalidates all interstate bus segregation statutes. A careful consideration of the Louisiana statute[13] does not appear to give the bus driver the right to shift the passengers about constantly. Thus, the Louisiana passengers are not subject to the same burdens permitted under the Virginia law. Nevertheless, the basic reasoning of the majority opinion would appear to undermine all state segregation statutes.

There is a possible private adjustment of the problem. The Court may approve, as to motor carriers, the rule now in effect as to segregation of interstate passengers on railroad coaches. Congressional inaction there is deemed equivalent to a declara-

11. Cooley v. Board of Wardens, 53 U.S. 299, 13 L.Ed. 299 (1851); The Minnesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, 33 S.Ct. 729, 57 L.Ed. 1511 (1913); Kelley v. Washington, 302 U.S. 1, 58 S.Ct. 87, 82 L.Ed. 3 (1937).

12. 66 S.Ct. 1050, 1061, 90 L.Ed. 982, 992 (U.S. 1946).

13. La. Act 209 of 1928, §§ 1, 2 [Dart's Stats. (1939) §§ 5307, 5308].

tion that a carrier may, by its regulations, separate white and negro interstate passengers.[14]

Assuming all state segregation statutes unconstitutional as to interstate passengers, another problem is presented. Would the holding of the principal case preclude segregation as to intrastate transportation? If the decision should be limited to interstate passengers, an interstate white passenger could occupy the rear seat with an intrastate negro passenger, and the converse would be true. The result would be less uniformity than would be possible under a segregation statute applicable to both interstate and intrastate passengers. And yet it would be a big step to the conclusion that state regulation as to intrastate passengers would be invalid even in the absence of congressional action on the subject.[15] A more supportable position would be that Congress could extend its regulation to intrastate travel in order to effectuate interstate regulation.[16]

Again, how will this decision affect other modes of travel? As to segregation on trains, it is well settled that a state segregation statute limited to intrastate passengers is valid.[17] The Supreme Court has not specifically ruled on the validity of a state segregation statute as to interstate railroad passengers.[18] The reasoning of the principal case indicates that such a state regulation would be unconstitutional. It is to be noted, however,

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14. Chiles v. Chesapeake & Ohio R. Co., 218 U.S. 71, 30 S.Ct. 667, 54 L.Ed. 936, 20 Ann. Cas. 980 (1910). Note that the carrier had its own segregation rules in the *Morgan* case, but the only question raised in the appeal was the validity of the statute itself. 66 S.Ct. 1050, 1052, 1053, 90 L.Ed. 982, 983, 984 (U. S. 1946).

15. Such a conclusion would be contrary to the recognized rule regarding intrastate segregation on the railroads. See cases cited infra note 17.

16. The Shreveport Rate Cases (Houston E. & W. T. R. Co. v. United States), 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); Railroad Commission v. Chicago, B. & Q. R.R., 257 U.S. 563, 42 S.Ct. 232, 66 L.Ed. 371 (1922).

17. Louisville, N.O. & T. R.R. v. Mississippi, 133 U.S. 587, 10 S.Ct. 348, 33 L.Ed. 784 (1890); Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896); McCabe v. Atchison, T. & S.F. R.R., 235 U.S. 151, 35 S.Ct. 69, 59 L.Ed. 169 (1914); State ex rel. Abbott v. Hicks, 44 La. Ann. 770, 11 So. 74 (1892).

18. Cases interpreting Supreme Court decisions to permit state segregation statutes as applied to interstate passengers: Alabama & V. R.R. v. Morris, 103 Miss. 511, 60 So. 11, Ann. Cas. 1915B, 613 (1912), writ of error dismissed on motion of counsel for plaintiff in error, 234 U.S. 766, 34 S.Ct. 675, 58 L. Ed. 1582 (1913); Southern R.R. v. Norton, 112 Miss. 302, 73 So. 1 (1916); Smith v. State, 100 Tenn. 494, 46 S.W. 566, 41 L.R.A. 432 (1898), writ of error dismissed 21 S.Ct. 917, 45 L.Ed. 1256 (U.S. 1900).

Cases interpreting Supreme Court decisions to outlaw segregation laws as to interstate passengers: Anderson v. Louisville & N. R.R., 62 Fed. 46 (C.C. Ky. 1894); State ex rel. Abbott v. Hicks, 44 La. Ann. 770, 11 So. 74 (1892); Carrey v. Spencer, 36 N. Y. Supp. 886 (1895); Hart v. State, 100 Md. 595, 60 Atl. 457 (1905); State v. Jenkins, 124 Md. 376, 92 Atl. 773 (1914).

that the rule that the railroad carrier itself may segregate is still applicable to interstate as well as intrastate passengers.[19]

Pullman and air line carriers, who are required, of course, to accommodate both races,[20] would be faced with a more serious burden than that in the instant case if forced to make provisions for separate accommodations.[21] In these cases, segregation, it would appear, is so impracticable as to render translation into a legal requirement out of the question.

In conclusion, a consideration of whether Congress could prescribe less than a nationally uniform rule for motor common carriers deserves comment. Taken literally, the language of Mr. Justice Reed's opinion[22] would reflect doubt upon an act of Congress providing for segregation in the southern states and non-segregation in other states. This troubled Mr. Justice Frankfurter, who was at pains to point out, in concurring, that "Congress may effectively exercise its power under the Commerce Clause without the necessity of a blanket rule for the country."[23]

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DONATIONS INTER VIVOS—MANUAL GIFTS—FORMALITIES REQUIRED—Mrs. Gorman, after being confined to the hospital, executed a power of attorney authorizing the defendant, a half sister, to withdraw her money from the bank. The evidence showed that Mrs. Gorman gave the defendant certain jewelry and her bankbook with the understanding that the jewelry and such money as was left after payment of bills would be a gift to the defendant. The defendant withdrew the money from the bank during the lifetime of Mrs. Gorman, paid her hospital bills and retained the balance as her own. In her will Mrs. Gorman left all her

19. Chiles v. Chesapeake & Ohio R.R., 218 U.S. 71, 30 S.Ct. 667, 54 L.Ed. 936, 20 Ann. Cas. 980 (1910).

20. 54 Stat. 902 (1940), 49 U.S.C.A. § 3(1) (Supp. 1945). As to dining car service, see Henderson v. United States, 63 F. Supp. 906 (D. C. Md. 1945).

21. Mitchell v. United States, 313 U.S. 80, 61 S.Ct. 873, 85 L.Ed. 1201 (1941) (where a negro traveling interstate recovered damages because he was forced by the conductor to move from his pullman to a coach provided for negro passengers, in purported compliance with an Arkansas statute requiring segregation).

22. Only two justices concurred in the majority opinion. Supra note 6.

23. He relied upon Clark Distilling Co. v. Western Maryland R.R., 242 U.S. 311, 37 S.Ct. 180, 61 L.Ed. 326, L.R.A. 1917B, 1218, Ann. Cas. 1917B, 845 (1917); and Whitfield v. Ohio, 297 U.S. 431, 56 S.Ct. 532, 80 L.Ed. 778 (1936) to support the theory that Congress may devise a national policy with due regard to varying interests of different regions. While that theory doubtless underlies those decisions, it should be noted that both involved federal implementation of state law (one as to liquor and the other as to convict-made goods), and not primary federal regulation.