Michigan Law Review

Volume 39 | Issue 8

1941

CARRIERS - COMMON CARRIERS - SEGREGATION OF RACES - DISCRIMINATION

John C. Johnston
University of Michigan Law School

CARRIERS — COMMON CARRIERS — SEGREGATION OF RACES — DISCRIMINATION — Plaintiff, a negro, had purchased a railroad ticket entitling him to first class accommodations from Chicago, Illinois to Hot Springs, Arkansas. When the train entered Arkansas, the conductor, in purported compliance

with an Arkansas statute requiring segregation of colored from white persons,[1] forced plaintiff to leave the Pullman car and ride in the second-class car set aside for colored passengers. Plaintiff alleged that this car was not equipped with the same conveniences which were provided for white passengers traveling first class, and he filed a complaint with the Interstate Commerce Commission claiming that he had been discriminated against in violation of the Interstate Commerce Act. The commission, in dismissing the complaint, found that in view of the infrequent demand for Pullman accommodations by the colored people, plaintiff was not unduly discriminated against by the action of the railroad. Plaintiff then brought suit in the district court to set aside the commission's order. That court dismissed the complaint. Appeal was then taken to the United States Supreme Court. *Held*, order reversed and remanded for further proceedings. The facts found by the commission established that plaintiff had been unduly discriminated against, and such discrimination is forbidden by section 3(1) of the Interstate Commerce Act.[2] *Mitchell v. United States*, (U. S. 1941) 61 S. Ct. 873.

Statutes requiring that railroad companies provide separate accommodations for the white and colored races are common in the southern states, and their constitutionality has uniformly been recognized despite frequent attack under the equal protection clause of the Fourteenth Amendment.[3] The element of discrimination by the statutes has been avoided by providing that the railroad company must furnish equal facilities for both races, and the courts have followed the theory that segregation does not imply that one race is inferior to the other.[4] The statutes themselves are justified as being an exercise of the police power for the comfort and convenience of the traveling public.[5] In so far as these statutes have been interpreted to apply only to intrastate commerce, they have been held not to be repugnant to the commerce clause,[6] but when attempts have been made to extend their operation to interstate passengers, the courts

[1] The state segregation statutes usually provide as an alternative to separate cars, that one car may be used for both white and colored passengers if there is a solid partition separating them. Thus, by giving colored passengers drawing room accommodations at the same prices which are charged for regular compartments, the railroads have been able to comply with the statutory requirements, and at the same time furnish sleeping car facilities to the small number of colored passengers who demand them. On the occasion in question, however, the drawing room had been previously assigned to white passengers.

[2] "That it shall be unlawful for any common carrier subject to the provisions of this act . . . to subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." 24 Stat. L. 380 (1887) as amended in 49 Stat. L. 607 (1935), 49 U. S. C. (Supp. 1939), § 3 (1).

[3] Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138 (1896); McCabe v. Atchison, T. & S. F. Ry., 235 U. S. 151, 35 S. Ct. 69 (1914); Anderson v. Louisville & N. R. R., (C. C. Ky. 1894) 62 F. 46.

[4] Plessy v. Ferguson, 163 U. S. 537 at 551, 16 S. Ct. 1138 (1896).

[5] Smith v. State, 100 Tenn. 494, 46 S. W. 566 (1898).

[6] Louisville, N. O. & T. Ry. v. Mississippi, 133 U. S. 587, 10 S. Ct. 348 (1890); Chesapeake & Ohio Ry. v. Kentucky, 179 U. S. 388, 21 S. Ct. 101 (1900); South Covington & C. St. Ry. v. Kentucky, 252 U. S. 399, 40 S. Ct. 378 (1920).

have held either that the statute is inapplicable,[7] or that it is invalid as an attempt upon the part of the state to regulate interstate commerce.[8] However, the question that more frequently arises is whether the carrier has, in complying with the segregation requirement, violated that portion of the state statutes requiring that equal accommodations be afforded white and colored passengers. When a person has in fact been discriminated against by the action of the railroad company, he may prosecute the officials of the company under the penal provisions of the statute,[9] and seek damages at law.[10] The plaintiff in the instant case, being an interstate passenger, chose to seek a different remedy, however, in asking that the Interstate Commerce Commission issue a cease and desist order against the railroad under the Interstate Commerce Act. The commission has always interpreted section 3(1) to the effect that it does not prevent the carrier from segregating the two races as long as equal accommodations are furnished to both.[11] The Supreme Court of the United States has in the present case affirmed that interpretation, and it is interesting to note that in so doing, it defined the right to non-discriminatory treatment under section 3(1) in the absolute language of the Fourteenth Amendment.[12] Thus, when the rights of interstate

[7] Carrey v. Spencer, (Sup. Ct. 1895) 36 N. Y. S. 886; Washington, B. & A. Electric Ry. v. Waller, (App. D. C. 1923) 289 F. 598.

[8] Hall v. DeCuir, 95 U. S. 485 (1877); Louisville, N. O. & T. Ry. v. Mississippi, 133 U. S. 587, 10 S. Ct. 348 (1890); Hart v. State, 100 Md. 595, 60 A. 457 (1905). But cf. Smith v. State, 100 Tenn. 494, 46 S. W. 566 (1898).

[9] The statutes requiring segregation usually have a provision making it a misdemeanor for the railroad officials to fail to provide equal accommodations. Ark. Stat. (Pope, 1937), §§ 1190, 1198; Ala. Code (Michie, 1929), § 5350; Ga. Code Ann. (1935), § 18-9901; Ky. Stat. Ann. (Carroll, 1930), § 797.

[10] At the time that plaintiff in the present case filed his complaint before the Interstate Commerce Commission he was maintaining an action for damages in Cook County, Illinois.

[11] Councill v. Western & A. R. R., 1 I. C. C. 339 (1887); Heard v. Georgia R. R., 1 I. C. C. 428 (1888); Edwards v. Nashville, C. & St. L. Ry., 12 I. C. C. 247 (1907); Cozart v. Southern Ry., 16 I. C. C. 226 (1909); Gaines v Seaboard Air Line Ry., 16 I. C. C. 471 (1909); Crosby v. St. L.—S. F. Ry., 112 I. C. C. 239 (1926).

[12] In the opinion in this case Chief Justice Hughes stated: "We take it that the chief reason for the Commission's action was the 'comparatively little colored traffic.' But the comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment, a right specifically safeguarded by the provisions of the Interstate Commerce Act. We thought a similar argument with respect to volume of traffic to be untenable in the application of the Fourteenth Amendment. We said that it made the constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of that right is that it is a personal one. . . . While the supply of particular facilities may be conditioned upon there being a reasonable demand therefor, if the facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual, we said, who is entitled to the equal protection of the laws,—not merely a group of individuals, or a body of persons according to their numbers." 61 S. Ct. at 878. Compare this language to that in Missouri ex rel. Gaines v. Canada, 305 U. S. 337 at 350, 59 S. Ct. 232 (1938), a case involving the right of a negro to enter a state university law school which was maintained for white students alone.

passengers are involved, the burden is placed directly upon the railroad. It must either abandon its policy of segregation or bear the risk of having to furnish separate and equal accommodations at a considerable loss.

John C. Johnston