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Constitutional Law--Interstate Commerce--State Control of Interstate Activities

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plished even with the removal of the undesirable provisions of the California statute. At a reasonable time before the scheduled execution of the prisoner, the state could allow an adversary proceeding in which the question of the prisoner's sanity could be determined. At this proceeding, the prisoner or any persons desiring to speak for him should be permitted to introduce any evidence relevant to the question of the prisoner's sanity. The warden of the prison may represent the state and make an initial determination of the prisoner's sanity at this proceeding. His decision could be reviewable by the highest executive of the state. The precedent against reviewing executive clemency would insure that the decision made by him on review of the warden's decision would be final. To assure the prisoner an opportunity to be heard, the determination of the question of his sanity should be on a procedural basis and not a discretionary one as is the usual case. When one takes cognizance of the finality of an execution, the suggested procedure hardly seems unduly time-consuming. Since neither the State of California nor the Supreme Court of the United States has devised a satisfactory method of recalling a departed prisoner from the great beyond and compensating him for the unpleasantness which would necessarily be occasioned by an improper execution, it hardly seems unreasonable to expect adequate procedural safeguards to prevent such an improper execution from occurring.

J. J. P.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—STATE CONTROL OF INTERSTATE ACTIVITIES.—*D*, an interstate motor carrier, was convicted and fined by the Public Service Commission of Virginia for operating in intrastate commerce without a certificate of convenience and necessity. The facts disclosed that *D* accepted goods in the state for transportation to other points within the state, shipped them to a point outside the state, and then to their destination. The normal routes for transportation between these points of origin and destination did not require that the goods leave the state. *Held*, that use of such circuitous routes nonetheless constituted intrastate commerce and the carrier was subject to penalties for so operating without a state certificate. *Service Storage & Transfer Co. v. Commonwealth*, 102 S.E.2d 339 (Va. 1958).

That the state has exclusive control of internal commerce under U. S. CONST. art. I, § 8, and U. S. CONST. amend. X is a doctrine

so well established that it may not be questioned here. *Elberton Southern Ry. v. State Highway Dep't*, 211 Ga. 838, 89 S.E.2d 645 (1955); *People v. Asta*, 337 Mich. 590, 60 N.W.2d 472 (1953). This doctrine retains its validity even where there is an indirect or incidental effect on interstate commerce. *Elberton Southern Ry. v. State Highway Dep't*, *supra*.

Likewise, it is well settled that the governmental regulation and supervision by a state of its internal commerce may lawfully be exerted through validly constituted administrative commissions or boards. *Pennsylvania R.R. v. Towers*, 245 U.S. 6 (1917).

The Public Service Commission is an administrative agency of the legislature which also has quasi judicial functions, and its acts are subject to judicial review. *Cage v. Public Serv. Comm'n*, 125 Pa. Super. 330, 189 Atl. 896 (1937). Whether a carrier's transportation of intrastate freight over an indirect interstate route is bona fide interstate commerce or merely subterfuge to avoid the jurisdiction of the Public Service Commission is primarily an administrative question to be determined by the commission. *Baltimore-Washington Express Co. v. Public Serv. Comm'n*, 209 Md. 121, 120 A.2d 363 (1956); *Blackmore v. Public Serv. Comm'n*, 120 Pa. Super. 437, 183 Atl. 115 (1936); *Atlantic Freight Lines v. Public Util. Comm'n*, 163 Pa. Super. 215, 60 A.2d 589 (1948).

Although pure questions of fact are for the Public Service Commission and not for the court, sufficient legally competent evidence is necessary to support findings of fact by the commission and to sustain its order. The commission cannot be capricious, arbitrary, or unreasonable, and an order of the commission not founded on competent and relevant evidence or otherwise not in conformity with law is subject to reversal. *Pennsylvania Tel. Corp. v. Public Util. Comm'n*, 153 Pa. Super. 316, 33 A.2d 765 (1943). In *Eastern Carrier Corp. v. United States*, 31 F. Supp. 232 (M.D. Pa. 1939), the court stated ". . . we may not overrule findings in this connection unless we find them to be arbitrary or capricious or not supported by substantial evidence." At this point, it may be added that a failure to include essential evidence in the record is a bar to the jurisdiction of the appellate court to pass upon the evidence upon which the commission's findings were based. *Louisiana & Pine Bluff R.R. v. United States*, 257 U.S. 114 (1921).

Considering the essential distinctions between interstate and intrastate commerce, the rule, broadly stated in ascertaining whether

transportation is interstate or intrastate is determined by its essential character from a consideration of all pertinent circumstances, and one of the most important tests is the intention of the parties in respect thereto and the manner of carrying out such intention. *State v. Western Trans. Co.*, 241 Iowa 896, 43 N.W.2d 739 (1950). In *Blackmore v. Public Serv. Comm'n*, *supra*, it was held that evidence that motor carriers transported freight moving between Pennsylvania termini over a route partly in another state as mere subterfuge to avoid regulation by the Public Service Commission supports findings that such movement was intrastate commerce. As to what constitutes subterfuge, the general proposition is that the solution of the problem depends upon the places of origin and destination and whether the routes are reasonable and necessary. *Baltimore-Washington Express Co. v. Public Serv. Comm'n*, *supra*. Touching of soil of another state, which was not in the ordinary course of business and an orderly and economical transaction of freight movement, does not make such movement interstate commerce and beyond state control. *Blackmore v. Public Serv. Comm'n*, *supra*. To constitute bona fide interstate commerce, it must appear that the goods have entered upon transportation to another state or have been delivered to the carrier for that purpose. *State v. Western Trans. Co.*, *supra*.

From these authorities, several general propositions can be deduced. Among these are: the state may control internal commerce; this control may be exercised through a validly constituted commission; the question of whether transportation is interstate or intrastate commerce, is one directed to the judgment of the commission; the findings of the commission are subject to judicial review, but will not be overruled unless shown to be arbitrary, capricious, or unreasonable, or not founded on legally competent evidence; and, if there is mere subterfuge to avoid state regulation, the transportation will be held to be intrastate in character.

In the principal case, the only question of importance is whether the transportation is interstate or intrastate in character. The places of origin and destination are within the state and the route outside the state is neither necessary nor reasonable, thus the finding of subterfuge is justified. By the overwhelming weight of authority, subterfuge to avoid state regulation will not convert intrastate transportation into interstate commerce. The decision of the Virginia court has sound basis in both authority and logic.

J. F. W., Jr.