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Automobile Registration—Owner of Automobile Leased For Compensation Without a Driver Entitled to Class "A" Registration and License Plates

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the land. . . . And there is no clear authority that such a lien may be discharged by either payment of a fixed sum or transfer of specific property." *Id.* at 303.

Owing to the recency of both the *Foster* and *Morris* cases, the question would appear settled in Virginia. However, the West Virginia cases present a greater uncertainty.

Martin v. Martin, 33 W. Va. 695, 11 S.E. 12 (1890), held erroneous a decree granting a wife alimony for her life. The *Hale* case, in arriving at a contrary holding, made no mention of this earlier case. *Games v. Games*, 111 W. Va. 327, 161 S.E. 560 (1931), held alimony not to be an estate, nor a portion of the husband's estate to be assigned to the wife; but merely an allowance out of his estate. A final decree for future alimony is not a vested property right. *Eaton v. Davis*, 176 Va. 330, 10 S.E.2d 893 (1940). The word "alimony" comes from the Latin "alimonia," meaning sustenance, and means therefore, the sustenance or support of the wife by her divorced husband and stems from the common-law right of the wife to support by her husband. *Ibid.*

The holding in the *Hale* case, decided in 1929, that alimony decreed to a wife for life is payable out of the husband's estate after his death, has been rendered doubtful by this language used in the more recent *Robinson* case: "but in view of our more recent decisions on the question, we doubt whether the rule laid down in the *Goff* and *Hale* cases should be applied as the settled law of this State, in respect to allowing liens to accrue after the death of a decedent against whom a decree for the payment of money in installments has been entered." 131 W. Va. at 171, 50 S.E.2d at 461.

"To sum up the whole matter, we are of the opinion that a decree in a divorce suit against a father, for the payment of money for the support of his children, becomes ineffective on his death; and that in the ordinary case, the same rule should apply to an alimony decree to a wife, though conceding that under the rule of *Hale v. Hale*, *supra*, situations may arise under which the Court would be warranted in decreeing alimony for the life of the wife." *Id.* at 173. 50 S.E.2d at 462. (Italics supplied.)

G. W. S. G.

AUTOMOBILE REGISTRATION—OWNER OF AUTOMOBILE LEASED FOR COMPENSATION WITHOUT A DRIVER ENTITLED TO CLASS "A" REGISTRATION AND LICENSE PLATES.—Original mandamus proceeding by automobile lessors against Commissioner of Motor Vehicles to compel issuance of class "A" automobile registration and license

plates for an automobile leased to a bank. *P* was engaged in business of leasing, without drivers, new passenger automobiles to individuals and firms. *P* leased an automobile to the bank under a lease that prohibited the bank from using it to transport property or persons for hire. *P* obtained a certificate of title for the automobile and applied to *D* for a class "A" registration and license. *D* refused on the grounds that under existing applicable statutory provisions *P* was entitled to only a class "U" registration and license. "Vehicles subject to registration . . . shall be placed in the following classes for the purposes of registration: Class A. Motor vehicles of passenger type other than those leased or operated for compensation; . . . Class U. Passenger motor vehicles rented for compensation without a driver." W. VA. CODE c. 17A, art. 10, § 1 (Michie, 1953 Supp.). *P* alleged that the statute had no application to *P*'s business because of the requirement that a class "U" license can not be issued unless "the assessment for such vehicle provided in section six, article six, chapter twenty-four-a of this Code shall have been paid." *Id.* c. 17A, art. 10, § 5. This is an annual assessment on all motor carriers which must be paid to the Public Service Commission. It was *P*'s contention that this assessment is required by law only of common and contract carriers, and that since *P* is not such a carrier and does not rent to common or contract carriers, the attempt to thus place him in such category deprives him of his property without due process of law. *D* demurred on grounds that the petition showed upon its face that the vehicle described in *P*'s petition was a passenger motor vehicle rented for compensation without a driver and therefore not entitled to class "A" registration and license plates. *Held*, that the owner of a motor vehicle, which is of a passenger type, and which is used solely for private transportation, though leased to another for compensation, is entitled to class "A" registration and license plates. *State ex rel. Schroath v. Condry*, 83 S.E.2d 470 (W. Va. 1954).

The controversy was whether, in light of the requirement that before obtaining a "U" license the applicant must have paid to the Public Service Commission a stated fee and obtained from that body a notice or certificate of payment for presentation to the Commissioner of Motor Vehicles, the legislature could place the holder of a class "U" registration and license in the category of a common or contract carrier when, in fact, the holder was not such carrier. Stated differently, whether, by legislative fiat, the legislature could make the petitioners subject to regulation as a

common or contract carrier. In coming to the conclusion that the legislature could not do this, the court ruled that all the pertinent statutory provisions must be read and considered in *pari materia* and that when this was done the result was an unconstitutional effort by the legislature to place the petitioners in the category of a common or contract carrier.

The real problem in the case would seem not to be whether a legislature by a series of acts can place the lessors of a privately owned and privately used vehicle in the category of a common or contract carrier, for by well settled law, it cannot do so. *Hertz Drivurself Stations v. Siggins*, 359 Pa. 25, 58 A.2d 464 (1948); *Roeske v. Lamb*, 39 N.M. 111, 41 P.2d 522 (1935); *Michigan Public Utilities Comm'n v. Duke*, 267 U.S. 570 (1925). It does not necessarily follow from this that a state can not prescribe different registration and license fees for motor vehicles leased for compensation without drivers than for motor vehicles used by the owners thereof for purely private purposes. The highways of the state are the public property of the state and their primary use is for private purposes; the legislature may prohibit or regulate, as it sees fit, the use for purposes of gain, which is a special and extraordinary use. *Stephenson v. Binford*, 287 U.S. 251 (1930).

The issue more clearly presented in the case is whether the West Virginia statutes dealing with the registration and licensing of motor vehicles must be so construed as to preclude, on constitutional grounds, the owners of a passenger motor vehicle leased to another person for compensation for the private use of such lessee, from being issued class "U" registration and license plates. This need not be answered in the affirmative if the sections of the statutes defining common and contract carriers, W. VA CODE c. 24A, art. 1, § 2 (Michie, 1949), and requiring applicants for class "U" registration and licenses to submit to control of the Public Service Commission, W. VA. CODE c. 17A, art. 10, § 5 (Michie, 1953 Supp.), should be construed as not being "of the same matter" as the classification of motor vehicles for purposes of registration and licensing in c. 17A, art. 10, § 1, *supra*. Why should this construction be adopted in the principal case? A firmly established rule is that, whenever an act of the legislature can be so construed and applied as to avoid a conflict with the constitution, and give it the force of law, such construction will be adopted by the courts. *Bennett v. Bennett*, 135 W. Va. 3, 62 S.E.2d 273 (1950); *State v. C. H. Musselman Co.*, 130 W. Va. 209, 59 S.E.2d 472 (1950); see Colson, *Some Elementary Principles of Constitutional Law*, 53 W. VA. L.

REV. 117 (1951). If the various statutory provisions which relate to common and contract carriers were to be so construed as not to apply to privately owned passenger automobiles leased for compensation for the private use of the lessee, then no constitutional question would be raised. The only code section pertinent, in a positive manner, to the question would be c. 17A, art. 10, § 1. It in itself is clear and unambiguous and would certainly seem to indicate that the legislature intended that class "A" registration and licenses were not to be issued to owners of passenger vehicles leased or operated for compensation, but that such vehicles were to be placed in class "U". If the legislative intent is clear, the courts should give the unambiguous language of a statute full force and effect, and should not attempt to read into the provision a meaning which is not intended. *Hereford v. Meek*, 132 W. Va. 373, 52 S.E.2d 740 (1949); *Barnhart v. State Compensation Comm'r*, 128 W. Va. 29, 35 S.E.2d 686 (1945); *State v. Patachas*, 96 W. Va. 203, 122 S.E. 545 (1924). To carry out this intent would require that an owner of an automobile so used pay a higher registration and license fee than an owner using his automobile in a purely private manner. This exercise of control is certainly within the power of the legislature. *Reeves v. Wright and Taylor*, 310 Ky. 470, 220 S.W.2d 1007 (1949); *Hodge Drive It Yourself v. City of Cincinnati*, 284 U.S. 335 (1932). It is merely a question of classification, seemingly a mandate by the legislature that the owner of a vehicle used in a commercial manner for his own gain shall pay a higher fee for such privilege than an owner whose use of his automobile is purely personal and private. This is no more than a regulation of the use of the public highways upon a rational and reasonable basis and does not involve the imposition of any unconstitutional conditions precedent to such use. *Driverless Car Co. v. Armstrong*, 81 Colo. 334, 14 P.2d 1098 (1932).

B. F. D.

CRIMINAL LAW—DEFENSES—INSANITY—"NEW TEST".—*D*, with a prior history of mental disorders, was indicted for housebreaking. On plea of insanity, it was shown that *D* was suffering from mental disturbance though the evidence was not conclusive as to how far the mental condition had progressed nor as to his capacity to distinguish right and wrong. Plea of insanity rejected and conviction followed. *Held*, on writ of error, that sufficient evidence had been introduced to meet the requirement of the "some evidence rule", which rebuts the presumption of sanity and makes