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## Carriers--Motor Bus Decision--Priority in Established Carriers

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CARRIERS—MOTOR BUS DECISION—PRIORITY IN ESTABLISHED CARRIERS.—In a very recent decision<sup>1</sup> the Supreme Court of Appeals of West Virginia held that existing carriers possess a right of priority to pre-empt the field of motor bus service over a highway between two points served by the railroads of that carrier. Such holding was based upon the public policy of the state to give to public utilities reasonable protection from detrimental competition. This public policy rests upon the theory of regulated monopoly rather than that of competition. The court in effect said that regulated monopoly will more efficiently and economically serve the public interest; that established rail carriers should be given preference over other applicants for bus licenses because their better equipment and greater resources afford greater security to the public in performing bus service.<sup>2</sup>

A question arises as to the desirability of a policy which creates or recognizes a property right in favor of established carriers by rail to pre-empt the field of motor bus transportation, to the exclusion of all other applicants desiring to render like service. Will the public convenience be better served by recognizing such a right? When we look to the history of the development of transportation we see that there has been numerous instances in which efforts have been made "to reserve the 'vested rights' of existing carriers from the onrushing tide of mechanical progress."<sup>3</sup> Turnpikes were built for the stagecoach; canals were constructed connecting rivers, thus affording a water transportation system; and after an enormous expenditure of private and public moneys, the steam railroad was developed. The steam railroad greatly reduced the earnings of the vessels carrying passengers and freight, and put the stagecoach out of business. Electric cars came forth and decreased the earnings of the steam roads between certain points.<sup>4</sup> Now, the steam and electric lines, which had surpassed all others in the field of transportation have en-

<sup>1</sup> *Monongahela West Penn P. S. Co. v. State Road Commission*, 139 S. E. 744 (W. Va. 1927).

<sup>2</sup> Court relied for this doctrine *Egyptian Transportation Company v. Louisville Railroad*, 321 Ill. 580, 159 N. E. 512 (1926). But see *Bartonsville Bus Line v. Eagle Motor Coach Line*, 326 Ill. 200, 157 N. E. 175 (1927).

<sup>3</sup> "Motor Carrier Regulations in Illinois," 22 *ILL. L. REV.* 65 (May 1927).

<sup>4</sup> *Rapid Ry. Co. v. Michigan Public Utilities Co.*, 225 Mich. 425, 196 N. W. 518 (1923).

countered the motor bus, which excels both in certain particulars and under certain conditions.<sup>5</sup> In the former competitions between the old and new means of transport, claims of protection and vested rights were made by the existing carrier<sup>6</sup>—but with no avail—for that service which gives most to the public wants wins. In the development of American transportation it remains as “an historical fact that such claims to protection have never been found consistent with the advancement of transportation, nor with the ultimate public good.”<sup>7</sup> “Can it, in the light of history,” or on principle, “be said that once an authorized public utility begins to serve a community with transportation service it is invested with a priority, if not indeed a monopoly into a perpetuity, to furnish transportation in whatever form science, with the passage of years discovers most effective, or the public test finds most to its liking?”<sup>8</sup> To answer this question in the affirmative would be to say that the railroad represents “the ultimate in transportation, so that unusual governmental obstacles should be placed in the path of a potential competitor.”<sup>9</sup> And in this age of evolution in the transportation business, we cannot say this, because we can look to the skies and foresee, in the near future, a transportation system in the air, extending the radius of human activity far beyond the scope of any vehicle that moves upon the surface of the earth.

—HOWARD CAPLAN.

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**MINES AND MINERALS—MINING PARTNERSHIPS—POWER OF ONE PARTNER TO BIND OTHER PARTNERS IN DEALINGS WITH THIRD PERSONS.**—In a recent West Virginia case, Simmons and Miller, under the firm name of A. J. Simmons Company, who owned an oil and gas lease on which was one produc-

<sup>5</sup> Budd, “West Virginia Motor Bus Guide,” May 1926.

<sup>6</sup> Charles River Bridge v. Warren Bridge, 11 Peters 423, 9 L. Ed. 773, 5 CHANNING, HISTORY OF UNITED STATES 20 (1921).

<sup>7</sup> *Supra*, n. 3.

<sup>8</sup> *Supra*, n. 3.

<sup>9</sup> *Supra*, n. 3.