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NOTES.

THE LIABILITY IN TORT OF A CHARITABLE HOSPITAL TO ITS PATIENTS.

Two recent cases, one in England [1] and the other in Pennsylvania,[2] raise again the interesting question of the liability of a charitable hospital to its patients for the negligence of its doctors and nurses. In the former the action was brought by a free patient for injuries received through the negligence of a surgeon or nurse during an operation. Recovery was denied on two grounds,—(1) that the surgeon and nurses (during an operation) were not the servants of the defendant, and (2) that the defendant's only undertaking was to use due care in the

[1] *Hillyer* v. *Mayor, etc.*, 101 L. T. 368 (1909).

[2] *Gable* v. *Sisters of St. Francis* (not yet reported), Pa. Sup. Ct. E. D., Jan. T. 1909, 290, 291.

selection of its servants and to furnish proper appliances. In the latter a pay patient brought the action for an injury due to the negligence of a nurse and was denied recovery on the trust fund theory.

The subject of the financial liability of a charity in general has now reached a stage of development where it merits comprehensive treatment, but the scope of this note will be confined to the single point of the liability of a charitable hospital to the recipients of its bounty for injuries due to the negligence of its doctors or nurses.

How far public policy requires the exemption of charities from liability in tort and contract is a question on which there is wide divergence of opinion,[3] but the authorities are practically unanimous that a charitable hospital should not be liable to its patients for the negligence of its servants. Two cases, one in Rhode Island [4] and the other in New Brunswick,[5] break this line of authority, but it is interesting to note that the next year after the Rhode Island decision was rendered it was overthrown by statute.[6] Granting, then, that public policy does demand the exemption of a hospital from liability to its patients in such cases, upon what theory is this exemption to be obtained?

1. *Where the Injury is Due to the Negligence of One not under the Control of the Hospital.*

No difficulty arises where the action is founded on the negligence of a surgeon or other person not under the control of the hospital, for the doctrine of *respondeat superior* applies only where the relation of master and servant is established, and this relation "exists only between persons of whom the one has the order and control of the work done by the other."[7] This was the ground of the decision of Farwell, L. J., in *Hillyer* v. *Mayor, etc., of London*,[8] and is unassailable.

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[3] Cf. "Public Charities and the Rule of Respondeat Superior," John M. Gest, Esq., 28 Am. Law Reg. N. S. 669. "Liability of Charitable Associations, etc.," R. M. McMurtrie, Esq., 29 Am. Law Reg., N. S. 209. "Torts of Hospitals," E. B. Callender, Esq., 15 Am. Law Rev. 640. See also *Central Law Journal*, vol. 53, p. 62, 224 and vol. 56, p. 184.

[4] *Glavin* v. *Hospital*, 12 R. I. 411, (1879).

[5] *Donaldson* v. *Commissioners*, 30 N. B. 279 (1890).

[6] Laws R. I. (1880) Ch. 162 § 1.

[7] Pollock on Torts (Webb) 91.

[8] 101 L. T. 368 (1909).

2. Where the Injury is Due to the Negligence of One under the Control of the Hospital.

Where, however, the tort is that of a servant of the hospital, the exemption from liability is not so easy. To attain this goal four theories have been suggested.

a. Respondeat Superior Based on Benefit.

In some cases the exemption has been attained by holding that the doctrine of *respondeat superior* is based on benefit, and that, therefore, as charitable hospitals are not conducted for gain, they do not fall within the reason of the rule.[9]

The fundamental objection to this is that, according to what seems the better view, the doctrine of *respondeat superior* is *not* based on benefit. "The law is plain that whosoever undertakes the performance of, or is bound to perform, duties * * * is liable for injuries caused by his negligent discharge of those duties. It matters not whether he makes money or a profit by means of discharging the duties, or whether it be a corporation or an individual that has undertaken to discharge them. If he elects to perform the duties by employing servants, if, in the nature of things, he is bound to perform the duties by employing servants, he is responsible for their action in the same way that he is responsible for his own."[10]

b. The Trust Fund Theory.

Prima facie, then, the doctrine of *respondeat superior* should apply to a hospital though not conducted for profit, and the trust fund theory has, therefore, been invoked to exempt such institutions from liability. This theory holds that "a public charity, whether incorporated or not, is but a trustee, and is bound to apply its funds in furtherance of the charity, and not otherwise." It was upon this principle that the recent case of *Gable* v. *Sisters of St. Francis* (not yet reported) has just been decided by the Supreme Court of Pennsylvania. The opinion rests mainly on two decisions,—*Fire Insurance Patrol* v. *Boyd,*[11] and *Downes* v. *Hospital*[12]—the Court failing to note

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[9] *Hearns* v. *Hospital,* 66 Conn. 98 (1895); *Farrigan* v. *Pevear,* 193 Mass. 147 (1906).

[10] *Gilbert* v. *Trinity House,* L. R. 17 Q. B. D. 795 (1886).

[11] *Fire Insurance Patrol* v. *Boyd,* 120 Pa. 624, 647 (1888).

[12] 101 Mich. 555 (1894).

that the latter decision, in so far as it was based on any trust fund theory, has been overruled.[13]

That the trust fund theory is not sound would seem to follow from an examination of the law of trusts in general. If the doctrine of *respondeat superior* is not based on benefit, an individual trustee of an unincorporated charity would doubtless be held personally liable for the negligence of the servants in the administration of the charity, and, upon well-known principles of trusts, he could, if personally not at fault, recover over against the fund;[14] and in such case the injured party could, instead of enforcing his judgment against the trustee as an individual, have immediate recourse against the trust fund in the nature of an equitable execution.[15] The law of trusts would, therefore, seem to uphold the liability of the trust fund for the negligence of the hospital's servants. Upon this line of reasoning, apparently, the Massachusetts Supreme Court, which had previously been committed to the trust fund theory,[16] was, in a recent action against the trustee of an unincorporated hospital,[17] forced to hold that the doctrine of *respondeat superior* is based on benefit. The trust fund theory is not a development of the law of trusts, but had its origin in a *dictum*, since repudiated, in the case of *Duncan* v. *Findlater*.[18]

Again, the trust fund theory seems unsound in that it permits the mere intention of the donor (granting that such intention exists) to withdraw his gift to the charity from the rules of property, a restraint on alienation far greater than that allowed, even in Pennsylvania, in the case of spendthrift trusts.

If the theory were carried to its logical conclusion it should certainly apply to breaches of contract as well as to torts, and to the negligence of the corporation in the selection of its servants as well as to the negligence of servants. No jurisdiction has, however, carried the doctrine to this extent. In Tennessee it has been expressly repudiated in the case of breach of contract.[19] Some jurisdictions have expressly restricted it to cases where the negligence is that of a servant,[20] though in

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[13] *Bruce* v. *Church*, 147 Mich. 230 (1907).

[14] *Bennett* v. *Wyndham*, 4 De. G. F. & J. 259 (1862).

[15] *In re* Raybould, (1900) 1 Ch. 199. In jurisdictions where such immediate recourse is not allowed the reason is purely procedural.

[16] *McDonald* v. *Hospital*, 120 Mass. 432 (1876).

[17] *Farrigan* v. *Pevear*, 193 Mass. 147 (1906).

[18] 6 Cl. & F. 894 (1839). This dictum was repudiated in *Mersey Docks Trustees* v. *Gibbs*, 1 E. & I. App. 93 (1866).

[19] *Hall-Moody Inst.* v. *Copass*, 108 Tenn. 582 (1902).

[20] *McDonald* v. *Hospital*, 120 Mass. 432 (1876).

others the language seems broad enough to cover all actions of tort.[21] In Pennsylvania the doctrine is not applied where the negligence is incident to a business collateral to the charitable object of the trust,[22] and the charity is liable for a municipal assessment for the cost of curbing, paving, etc., though such is held to be "a liability incurred for neglect of a duty imposed by the police power of the city."[23]

Finally, the trend of authority to-day is away from the trust fund theory as a ground of the exemption of charitable hospitals from liability for the negligence of their servants. In England, to be sure, the case of *Feoffees of Heriot's Hospital* v. *Ross*[24] has never been expressly overruled, but, as it was based on the *dictum* in *Duncan* v. *Findlater*,[25] overruled in *Mersey Docks Trustees* v. *Gibbs*,[26] and as no mention of it was made in the recent case of *Hillyer* v. *Mayor, etc.*,[27] it must be considered as no longer an authority, and it may be safely said that the trust fund theory on which it was based has been repudiated in England. The Federal[28] and New York[29] courts have refused to apply this doctrine. It has been criticised in New Hampshire,[30] is not followed in Connecticut,[31] has been repudiated in Michigan,[32] and has never been followed in Rhode Island[33] or New Brunswick,[34] and even the Massachusetts Supreme Court, which early adopted it, showed a tendency when the question was last brought before it[35] to find other grounds of exemption. On the other hand, an examination of the cases in the few jurisdictions which still adhere to the trust fund theory will show that most of them can be explained on more satisfactory grounds.

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[21] *Parks* v. *N. W. University*, 218 Ill. 381 (1905); *Abston* v. *Waldon Academy*, 118 Tenn. 24 (1906); *Perry* v. *House of Refuge*, 63 Md. 20 (1884).

[22] *Winnemore* v. *Phila.*, 18 Pa. *Super.* 625 (1901).

[23] *Phila.* v. *Penna. Hospital*, 143 Pa. 367 (1891).

[24] 12 Cl. & F. 507 (1846).

[25] 6 Cl. & F. 894 (1839).

[26] 1 E. & I. App. 93 (1866).

[27] 101 L. T. 368 (1909).

[28] *Powers* v. *Hospital*, 109 Fed. 294 (1901).

[29] *Kellogg Church Foundation*, 112 N. Y. S. 566 (App. Div.) (1908).

[30] *Hewett* v. *Association*, 73 N. H. 556 (1906).

[31] *Hearns* v. *Hospital*, 66 Conn. 98 (1895).

[32] *Bruce* v. *Church*, 147 Mich. 230 (1907).

[33] *Glavin* v. *Hospital*, 12 R. I. 411 (1879).

[34] *Donaldson* v. *Commissioners*, 30 N. B. 279 (1890).

[35] *Farrigan* v. *Pevear*, 193 Mass. 147 (1906).

c. Assumption of Risk.

During the last few years the non-liability of a charitable hospital to its patients has been explained upon the theory that the beneficiaries, including pay as well as free patients, assume the risk of any injury incurred through the negligence of the hospital's servants if due care has been used in their selection. This doctrine is followed in the Federal,[36] Michigan,[37] and New York[38] courts and has been at least suggested in England.[39] It seems in the main to be a satisfactory ground of decision.

d. Limited Undertaking.

Another doctrine, which is at least plausible, was the basis of the opinion of Kennedy, L. J., in the recent case of *Hillyer* v. *Mayor, etc.*[40] Under it the exemption of a hospital from liability for the negligence of its servants is based on the theory that a hospital undertakes merely to use due care in the selection of its servants and to furnish proper appliances.

Under either of the last two theories the patient could, of course, recover if he could establish a contract which the hospital had broken.[41]

Institutions of public charity are daily becoming more numerous, and the problems connected with their liability are, therefore, of increasing importance. How far public policy will in the future demand their exemption from liability is of course problematical, but the development of the law indicates that the required exemption will at no distant date be placed upon firmer and more satisfactory foundations than any trust fund theory can supply.

H. E.

Right of Surety to Exoneration.

The right of the surety to maintain a bill in equity against the principal debtor after the obligation becomes payable, and exonerate himself from further liability, has been recognized

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[36] *Powers* v. *Hospital*, 109 Fed. 294 (1901).

[37] *Bruce* v. *Church*, 147 Mich. 230 (1907).

[38] *Kellogg Church Foundation*, 112 N. Y. S. 566 (App. Div.) (1908).

[39] *Tozeland* v. *Guardians*, L. R. (1907) 1 K. B. 920. See 47 Am. Law Reg. N. S. 124.

[40] 101 L. T. 368 (1909).

[41] *Ward* v. *Hospital*, 79 N. Y. S. 1004 (App. Div.) (1903).

from early times; and this is true, notwithstanding the surety has not paid the debt, and whether he has been sued by the creditor or not. This is in the nature of a bill *quia timet* to *compel* the principal debtor to pay the debt and perform the obligation, provided the creditor can enforce payment or performance, but neglects or refuses to do so. The creditor must, however, be joined as co-defendant.

This principle is illustrated by a recent case, *Ascherson* v. *Tredegar Dry Dock and Wharf Co., Ltd.*[1] The plaintiff's intestate had become surety for a limited amount against the defendant's overdrafts, for a period of time determinable upon notice. Upon the death of the surety, his executor, the present plaintiff, desiring to wind up the estate, requested the defendants to discharge him from liability upon an overdraft of 17219l., and upon their refusal, brought this suit. Plaintiff claimed the right to be discharged and exonerated from all liability under the guarantee, by compelling the defendants to pay the bank the amount of the overdraft. It was contended that until the guarantee had been determined, and the overdraft called in, no right of action accrued to the bank against the surety; but the Court was of opinion that this was unsound. Repayment of the overdraft could be enforced by the bank at any time, as the contract did not compel the bank to allow overdrafts. Since, therefore, the bank has a present right of action against the surety, the latter may come into equity to compel the principal debtor to pay what is due from him, to the intent that the surety may be relieved, and it was so decreed.

To the same effect is the case of *Holcomb* v. *Fetter*[2] where payment was decreed by the principal debtor, at the instance of the surety, notwithstanding that it did not appear that the principal debtor was insolvent or in danger of becoming so; the Court holding that the jurisdiction does not rest upon this ground. It was further argued that if the creditor should sleep upon his rights and fail to bring action, such laches would be a good defense to an action against the surety for contribution. But the creditor is not barred by laches alone; and further, the cases rest upon the principle that there is a debt due which it is the duty of the principal debtor, in exoneration of his surety, to pay forthwith. The bill is one of *quia timet*. The plaintiff has a present right to exoneration because the debt is due.[3]

[1] Ct. of App. 1909, L. R. 2 Ch. 401.

[2] 67 Atl. Rep. 1078 (N. J.).

[3] See also *Frick* v. *Black*, 17 N. J. Eq. 189; *West* v. *Chasten*, 12 Fla.

At law, the surety must pay the debt before he can have an action against his principal;[4] and grave doubts were for a long time entertained as to the right of the surety to call upon the creditor to prosecute his demand against the principal debtor. It was deemed an interference with the legal rights of the creditor, for he may have looked more to the surety than to the actual debtor, resting content under the doctrine that it is the surety's business to see whether the principal pays, and not that of the creditor. Consequently, the surety could impose no burden upon the creditor by notifying him to proceed against the principal, and this was the rule in most jurisdictions at the common law.

In most States by statute, however, the surety may require the creditor by written notice to bring suit against the principal; and upon the creditor's refusal or failure to comply with such notice, the surety is released, unless the principal was insolvent at the time notice was given, or becomes insolvent before the creditor can collect by process;[5] and the burden is on the creditors to show that action would have been unavailing. But independently of statute, the surety might get a decree in chancery that the creditor sue or take out execution against the principal for good cause shown; it being unreasonable that a man should have such a cloud always hanging over him; but this action is limited, generally, to cases where it works no hardship upon the creditor, and would work a hardship upon the surety if the creditor were to proceed directly against the surety.[6]

In Pennsylvania, however, *notice* has been substituted for the *decree* in chancery; but the notice must be as explicit as a decree that the creditor sue or execute the principal;[7] and where the surety had notified the plaintiff to proceed and "collect his money, as he would be bail no longer," and later extended the time to a specified day, and the creditor did not issue process, and the principal debtor, six days after the expiration of the extended time, assigned all his property for the benefit of creditors, the surety was not discharged, because there was not that explicit direction to proceed that the law

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315; *Graham* v. *Thornton*, 9 South (Miss.) 292 (1891); *Stump* v. *Rogers*, 1 Ohio 533; *Bishop* v. *Day*, 13 Vt. 81; *Dobio* v. *Fidelity & Casualty Co.*, 95 Wis. 540; *Craighead* v. *Swartz*, 219 Pa. 149.

[4] *Bishop* v. *Day*, 13 Vt. 81.

[5] 85 Ill. 22; 9 Ind. 245; 6 Iowa, 538; 76 Mo. 70.

[6] *Marsh* v. *Pike*, 10 Paige, 595 (N. Y.); *Dobio* v. *Fidelity Co.*, 95 Wis. 540; *City of Keokuk* v. *Love*, 31 Ia. 119.

[7] *Cope* v. *Smith*, 8 S. & R. 115; *Greenawalt* v. *Kreider*, 3 Barr. 267.

required in order to relieve him from liability; nor will a mere notice by the surety to the creditor that he would no longer consider himself bound, and requesting him to take another bond or payment, absolve the surety.[8]

G. H. B.

CARRIERS—CAR DISTRIBUTION—COMPANY FUEL CARS.

As a common carrier, a railroad is required to furnish all facilities necessary for transportation, including cars, a supply of which must be afforded sufficient to accommodate the traffic offered. It is not incumbent, however, upon a railroad to furnish sufficient specialized cars to meet the demand therefor at all times. Such cars must necessarily remain idle except when required by the traffic to which they are particularly adapted, and for that reason a railroad is held to have discharged its obligation by furnishing enough of such cars to meet the average demand.[1] Coal cars are suited only to the transportation of coal, and are, therefore, within this rule. As the output of bituminous coal fluctuates in a marked degree, as a result of the varying demand for that commodity, and as the lack of storage facilities at the mine makes it imperative that the coal be taken by the carrier at the mouth of the mine, it follows that at certain periods it is impossible for the carrier to supply all shippers with a sufficient number of cars to enable them to meet the market demand for coal. In such periods it is the duty of the carrier to pro-rate the available cars among all shippers in a particular district, so that none will be put at a disadvantage as regards his competitors.[2]

In order to arrive at a fair and just distribution of available cars, it is necessary, first, that the capacity of each mine in the district under consideration be ascertained, and, second, that an equitable scheme for the allotment of cars in shortage periods, in proportion to the capacities of the mines, be fixed upon. The question of determining the capacity of a mine is not strictly a judicial one, and it is not within the scope of the present note to discuss the various schemes for ascertaining capacity that have been passed upon by the courts. Suffice it to give the following statement by Judge Goff of the factors that

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[8] *Greenawalt* v. *Kreider*, 3 Barr. 264.

[1] U. S. *ex rel. Pitcairn Coal Co.* v. *B. & O. R. Co.*, 165 Fed. 113, 119, (reversed on a question of jurisdiction by the United States Supreme Court, Jan. 10, 1910).

[2] § 3, Act to Regulate Commerce, as amended by Act of June 29, 1906, 34 Statutes at Large, 584.

must be considered. "The capacity of a coal mine for rating purposes is the amount of coal it is able to place in the railroad cars in a given time, and that depends on its working places, the thickness of its coal seams, its switches, workmen, mine cars and tipples, its general equipment and its management."[3]

It is the method of distribution of cars after the capacities of the various mines have been ascertained, that gives rise to difficulties. There are four classes of cars that must be included in making distribution; system cars, those belonging to the railroad and devoted to general use; private cars, those belonging to mine operators; foreign railway fuel cars, those belonging to a connecting carrier, assigned by it to particular mines for the purpose of obtaining fuel coal; company fuel cars, those belonging to the carrier touching the mines in question, and assigned by it to particular mines for fuel coal.

System cars are affected by no consideration varying the general rule, and must, of course, be apportioned ratably according to the respective capacities of the mines.

Private cars have afforded some difficulty in the past, but it is now settled that they must be counted against the percentage of system cars to which any mine is entitled in shortage periods,[4] but a mine is entitled to all the cars that it owns although they exceed the number of system cars to which it would be entitled in the absence of such ownership.[5] The ground for this rule is that, as it is the duty of the railroad, and not of the shipper, to furnish cars, all cars in use must be considered as belonging to the railroad, no matter how obtained by it.[6] This rule is justified by the consideration that private cars constitute a tax upon the transportation facilities of the carrier, to only a ratable share of which the owner of private cars is

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[3] U. S. *ex rel. Kingwood Coal Co.* v. *W. Va. N. R. Co.* 125 Fed. 252, 256.

[4] *P. R. Com. of Ohio* v. *H. V. R. Co.*, 12 Interst. Com. Rep. 398, 411; *Rail & River Coal Co.* v. *B. & O. R. Co.*, 14 I. C. C. Rep. 86, 91; U. S. *ex rel. Coffman* v. *N. & W. Ry. Co.*, 109 Fed. 831, 837; *Logan Coal Co.* v. *P. R. Co.* 154 Fed. 497, 503; U. S. *ex rel. Pitcairn Coal Co.* v. *B. & O. R. R. Co.*, 165 Fed 113, 126, (reversed on a question of jurisdiction by United States Supreme Court on Jan. 10, 1910); *Tracr* v. *Chi. & Alt. R. Co.*, 13 Interst. Com. Rep. 451, 458.

[5] *P. R. Com. of Ohio* v. *H. V. R. Co.*, 12 Interst. Com. Rep. 398, 411; *Rail & River Coal Co.* v. *B. & O. R. Co.* 14 I. C. C. Rep. 86, 92; *Tracr* v. *Chi. & Alt. R Co.*, 13 Interst. Com. Rep. 451, 458.

[6] *Shamberg* v. *D., L. & W. R. Co.*, 4 I. C. C. Rep. 630, 660; *Rice* v. *W. N. Y. & P. R. Co.*, 4 I. C. C. Rep. 131, 149; *Refiner's Association* v. *W. N. Y. & P. R. Co.* 5 I. C. C. Rep. 415, 434; *In re* Transportation of Fruit, 11 Interst. Com. Rep. 129, 137.

entitled.[7] With this proposition in view it is difficult logically to justify the latter part of the rule, giving a mine operator the use of all his private cars at all events; but as a practical proposition, its fairness seems unquestionable.

The same rule has finally been settled upon with regard to foreign railway fuel cars. Those consigned to a particular mine must be counted against its percentage, but it is entitled to all cars so consigned though they exceed its percentage,[8] and this rule has been adhered to in the face of objections by the company assigning the cars.

Company fuel cars also are governed by the same rule of distribution,[9] but a stubborn fight was made against it by both the shippers and the railroads, and the question was finally settled only by an appeal to the United States Supreme Court.[10] The argument against counting domestic fuel cars, which prevailed in the Circuit Court, is as follows: "Commerce in this instance (company fuel cars) ends at the tipples. From there on * * * there is no consignor, no consignee, no shipper, no common carrier, no freight, no vehicle transporting a commodity in commerce. * * * It is erroneous, therefore, to require complainants, in distributing their available commercial equipment among their shipping patrons, to take account of cars that are used in handling their own fuel."[11]

On appeal, the Supreme Court, reversing the Circuit Court and affirming the Commission, held that in reviewing a decision of the Commission only three questions were open for consideration, (1) relevant questions of constitutional power and right, (2) whether the scope of the delegated power had been exceeded in form, (3) whether the scope of such authority had been exceeded in substance. It then held that the question of taking account of company fuel cars for purposes of distribution was within the jurisdiction of the Commission, as com-

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[7] *Logan Coal Co.* v. *P. R. Co.*, 154 Fed. 497, 503, *Rail & River Coal Co.* v. *B. & O. R. Co.*, 14 S. C. C. Rep. 86, 92.

[8] *R. R. Com. of O.* v. *H. V. R. Co.*, 12 Interst. Com. Rep. 398, 405; *Traer* v. *Chi. & Alt. R. Co.*, 13 Interst. Com. Rep. 451, 458; *Rail & River Coal Co.* v. *B. & O. R. Co.*, 14 I. C. C. Rep. 86, 91; *Logan Coal Co.* v. *P. R. Co.* 154 Fed 497, 503; U. S. *ex rel. Pitcairn Coal Co.* v. *B. & O. R. Co.*, 165 Fed. 113, 126, (reversed on a question of jurisdiction by United States Supreme Court, Jan. 10, 1910).

[9] *Traer* v. *Chi. & Alton R. Co.*, 13 Interst. Com. Rep. 451, 458; *Logan Coal Co.* v. *P. R. Co.*, 154 Fed. 497, 503; U. S. *ex rel. Pitcairn Coal Co.* v. *B. & O. R. Co.*, 165 Fed. 113, 126 (reversed on a question of jurisdiction by United States Supreme Court, (Jan. 10, 1910).

[10] *I. C. C.* v. *Ill. Cent. R. Co.*, 215 U. S., (Jan. 10, 1910).

[11] *Chi. & Alt. R. Co.* v. *I. C. C.*, 173 Fed. 930, 933.

merce excludes all transportation whether commercial or not, and all equipment used therein. After disposing of a question of the power of the Commission arising in connection with the construction of section 4 of the act, the Court then takes up a number of logical objections to the rule laid down by it and dismisses them with the remark that they merely suggest the complexity of the subject, and go only to the expediency of the Commission's order.

The whole attitude of the Court seems to be that it will not disturb a decision of the commission on questions within its jurisdiction and powers, as such questions are influenced by practical economic considerations, that should properly be left to the discretion of the commission as a body of experts. The indication is, therefore, that all the rules laid down by the Commission concerning the distribution of cars will be affirmed if taken to the United States Supreme Court.

E. S. B.